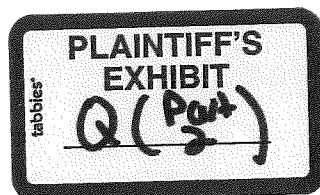


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<p style="text-align: right;">226</p> <p>1 that's what we submitted to the panel and he can talk</p> <p>2 about it later in this hearing. Do you know what was</p> <p>3 the effect on the measure of damages for Tricon of the</p> <p>4 reduction of the KP volume?</p> <p>5 A. It hurt very bad.</p> <p>6 Q. Okay. It reduced the damages. Correct, sir?</p> <p>7 A. You're saying --</p> <p>8 Q. Because KP Chemicals did not take the 5,000</p> <p>9 they were obligated to take under the contract, did that</p> <p>10 increase or decrease our measure of damages in this</p> <p>11 case? It decreased it, did it not?</p> <p>12 A. Can you rephrase the question? I'm sorry.</p> <p>13 Q. My question to you was, what was the</p> <p>14 consequence on the damages measured by Mr. Matthews for</p> <p>15 Tricon in this case of the fact that KP only took 3220</p> <p>16 metric tons?</p> <p>17 A. Yeah. That hurt. That hurt Tricon, yeah.</p> <p>18 Q. It reduced the damages that we could claim?</p> <p>19 A. That's correct.</p> <p>20 JUDGE DAVIDSON: Well, wait a minute. If</p> <p>21 it reduced the damages you can claim, then it helped</p> <p>22 Tricon.</p> <p>23 JUDGE WOOD: No. It helped Vinmar.</p> <p>24 MR. DIAZ-ARRASTIA: No. If -- no, no. If</p> <p>25 KP had taken the entire 5,000 our measure of damages</p>	<p style="text-align: right;">228</p> <p>1 buy-sell?</p> <p>2 A. That is correct.</p> <p>3 Q. And that is why it does reflect an accurate</p> <p>4 market price?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. It also says that that's a spot deal.</p> <p>7 Correct?</p> <p>8 A. That's what his word was, yes.</p> <p>9 Q. And can you tell me, when was the deal, the</p> <p>10 sale involving those 1600 metric tons made?</p> <p>11 A. Prior to the Vinmar transaction.</p> <p>12 Q. Okay. Which is the reason why the price was</p> <p>13 high?</p> <p>14 A. That's right.</p> <p>15 Q. Go to Joint Exhibit 21. It's the --</p> <p>16 JUDGE WOOD: 21?</p> <p>17 MR. DIAZ-ARRASTIA: Joint Exhibit 21.</p> <p>18 Q. (BY MR. DIAZ-ARRASTIA) And Mr. Lee made --</p> <p>19 asked you questions about Joint Exhibit 22 and just</p> <p>20 where -- I think that's correct if I'm looking at the</p> <p>21 correct right book. Yeah.</p> <p>22 Mr. Lee also asked you questions about</p> <p>23 Joint Exhibit 22 where -- is where you notified KP that</p> <p>24 you were going to sell them their 5,000 metric tons in</p> <p>25 the month of September?</p>
<p style="text-align: right;">227</p> <p>1 calculation would have been a larger number.</p> <p>2 JUDGE DAVIDSON: Right, because your</p> <p>3 damages weren't as great.</p> <p>4 MS. LARSON: No, but we would have made</p> <p>5 both sets.</p> <p>6 MR. DIAZ-ARRASTIA: No, but we would have</p> <p>7 made both sets.</p> <p>8 JUDGE DAVIDSON: Okay.</p> <p>9 MR. DIAZ-ARRASTIA: You'll see that when</p> <p>10 Mr. Matthews testifies.</p> <p>11 Q. (BY MR. DIAZ-ARRASTIA) Could you -- let's</p> <p>12 take a look at Vinmar 23. And let's see. Let's go down</p> <p>13 a little bit. Right there. A couple of pages further.</p> <p>14 At this point here.</p> <p>15 JUDGE DAVIDSON: What exhibit?</p> <p>16 MR. DIAZ-ARRASTIA: Vinmar 23.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Lockwood,</p> <p>18 looking at Vinmar 23, Mr. Lee asked you a lot of</p> <p>19 questions about this specific with regard to the 1600</p> <p>20 metric tons?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And the price for those 1600 metric</p> <p>23 tons were 1235 per metric ton. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And your testimony has been that that was a</p>	<p style="text-align: right;">229</p> <p>1 A. That's correct.</p> <p>2 Q. But, now, Joint Exhibit -- and Mr. Lee asked</p> <p>3 you whether Vinmar had been given a copy of that and</p> <p>4 they had not. Correct?</p> <p>5 A. That's what he said, yes.</p> <p>6 Q. Now, Joint Exhibit 23 is where Mr. Rajevac</p> <p>7 tells Mr. Wilson that if they don't perform the material</p> <p>8 will be resold on the open market?</p> <p>9 A. That's correct.</p> <p>10 Q. That is notice of intent to resell. Correct?</p> <p>11 A. That is correct.</p> <p>12 Q. And if we scroll up to the e-mail that you</p> <p>13 sent to Mr. Antonvich later that same day, you again</p> <p>14 tell Mr. Antonvich that if Vinmar does not perform</p> <p>15 Tricon intends to resell.</p> <p>16 A. That's correct.</p> <p>17 Q. And these e-mails were sent to Vinmar?</p> <p>18 A. That's correct.</p> <p>19 Q. Go to Joint Exhibit No. 10, please. And if --</p> <p>20 let's go to the page that is MOAB 13. These are instant</p> <p>21 messages between you and Mr. Leyman?</p> <p>22 A. That's correct.</p> <p>23 Q. And since this is indicated as a MOAB</p> <p>24 document, is it your understanding that that's a</p> <p>25 document that was produced by Mr. Leyman?</p>



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<p style="text-align: right;">230</p> <p>1 A. Yes.</p> <p>2 Q. So these are his records?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Take a look at 1:15:27 p.m.</p> <p>5 MR. DIAZ-ARRASTIA: Can you focus in on</p> <p>6 that, please?</p> <p>7 A. What exhibit -- what exhibit are we on?</p> <p>8 Q. (BY MR. DIAZ-ARRASTIA) It is Joint Exhibit</p> <p>9 No. 10, Page MOAB 13 --</p> <p>10 A. Okay.</p> <p>11 Q. -- which is just a few pages in.</p> <p>12 A. Okay.</p> <p>13 Q. 1:15:27 p.m.</p> <p>14 A. That's correct.</p> <p>15 Q. Can you see where Mr. Leyman is telling you,</p> <p>16 "You have a problem with Vinmar"?</p> <p>17 A. Yes.</p> <p>18 Q. Is this where Mr. Wilson -- where Mr. Leyman</p> <p>19 told you that Mr. Wilson had informed him that he</p> <p>20 required U.S. origin?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, Mr. Leyman's office is in</p> <p>23 Connecticut. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. So his IM records would reflect eastern time.</p>	<p style="text-align: right;">232</p> <p>1 Exhibit No. 14. And that is the e-mail -- that is the</p> <p>2 e-mail where Mr. Rajevac informs Mr. Pascu that Asian</p> <p>3 origin might be supplied?</p> <p>4 A. I think you're wrong again. I think it's 15.</p> <p>5 Q. No. It's -- no. It's 14?</p> <p>6 MS. LARSON: No. 3.</p> <p>7 A. 14?</p> <p>8 Q. (BY MR. DIAZ-ARRASTIA) 14.</p> <p>9 A. Vinmar what at the bottom?</p> <p>10 Q. Right. Vuk Rajevac to Laurentiu Pascu on</p> <p>11 July 29th, 2008. Are you in the Joint Exhibit book?</p> <p>12 A. Okay. Yeah, I'm in the Joint Exhibit book.</p> <p>13 Q. Okay.</p> <p>14 A. On No. 009 at the bottom?</p> <p>15 Q. 009 at the bottom.</p> <p>16 A. Okay. Yes. I'm on No. 3 at the bottom.</p> <p>17 Q. That's right.</p> <p>18 A. Okay. I see it.</p> <p>19 Q. Okay. You see that. And during Mr. Lee's</p> <p>20 questioning, he pointed out that on top of that there is</p> <p>21 an e-mail from Mr. Pascu to Mr. Wilson forwarding</p> <p>22 Mr. Rajevac's e-mail?</p> <p>23 A. That's correct.</p> <p>24 Q. And I think your testimony was that we do not</p> <p>25 know when Mr. Rajevac -- when Mr. Pascu would have</p>
<p style="text-align: right;">231</p> <p>1 Correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Now, let's look at Joint Exhibit</p> <p>4 No. 15. And this is where we have an e-mail that</p> <p>5 Mr. Wilson is telling Mr. Rajevac, "We must have" -- no,</p> <p>6 that's not the one I want. Excuse me.</p> <p>7 MR. DIAZ-ARRASTIA: Which is the one --</p> <p>8 no. I'm looking for the one where Laurentiu forwards</p> <p>9 Wilson --</p> <p>10 THE WITNESS: Exhibit 13?</p> <p>11 MR. DIAZ-ARRASTIA: Hold on a second. No,</p> <p>12 this isn't the one.</p> <p>13 (Brief discussion off the record.)</p> <p>14 MR. DIAZ-ARRASTIA: Excuse me a moment.</p> <p>15 I'm looking for another exhibit.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) That's right. Joint</p> <p>17 Exhibit 13. Excuse me. And this is the e-mail where</p> <p>18 Mr. Rajevac tells Mr. Pascu that Asian origin might be</p> <p>19 supplied. Correct?</p> <p>20 A. Which e-mail are you referring to?</p> <p>21 Q. Joint Exhibit No. 13. No, this isn't it</p> <p>22 either.</p> <p>23 A. That's not it.</p> <p>24 Q. Where is that? Oh, here it is. It's Joint</p> <p>25 Exhibit 14. I apologize. I apologize. It's Joint</p>	<p style="text-align: right;">233</p> <p>1 informed Wilson of Pascu's comments?</p> <p>2 A. That's correct.</p> <p>3 Q. Let me ask you something, Mr. Lockwood. If</p> <p>4 the operations specialist learned of something that was</p> <p>5 considered a critical term of your deal, how long should</p> <p>6 it take for them to report that to the trader?</p> <p>7 MR. LEE: Objection. Calls for</p> <p>8 speculation.</p> <p>9 JUDGE BENTON: It's overruled.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) What do you do -- what</p> <p>11 do you do within Tricon?</p> <p>12 A. Within two seconds.</p> <p>13 Q. Okay. And let me point out to you the e-mail</p> <p>14 to -- Mr. Pascu sent to Mr. Wilson. Let's look at the</p> <p>15 date on that. It was July 31st, 2008, at 1:39 p.m.</p> <p>16 Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Now, at 1:00 -- and that would be central time</p> <p>19 because both Vinmar and Tricon are located in Houston.</p> <p>20 Right?</p> <p>21 A. That's correct.</p> <p>22 Q. If we go back to Joint Exhibit 10, MOAB 13,</p> <p>23 where we were earlier, Mr. Leyman is telling you that</p> <p>24 you have a problem regarding origin at 1:15:27 p.m.</p> <p>25 eastern time --</p>

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<p>1 A. That's correct.</p> <p>2 Q. -- on the same day?</p> <p>3 A. That's correct.</p> <p>4 Q. So Mr. Wilson had told Mr. Leyman that he</p> <p>5 wanted U.S. origin and Mr. Leyman had told it to you</p> <p>6 about an hour and 15 minutes before Mr. Pascu forwarded</p> <p>7 Mr. Rajevac's e-mail to Mr. Wilson?</p> <p>8 A. That's very surprising that you point that</p> <p>9 out, but, yes, you're correct.</p> <p>10 Q. So there's no way that Mr. Wilson first found</p> <p>11 out about Mr. Rajevac's communication at 1:39 p.m.</p> <p>12 central time on July 31st?</p> <p>13 A. You're exactly right.</p> <p>14 (The time is 3:03 p.m.)</p> <p>15 MR. DIAZ-ARRASTIA: I pass the witness.</p> <p>16 JUDGE BENTON: Mr. Lee, anything else for</p> <p>17 Mr. Lockwood?</p> <p>18 MR. LEE: I don't think so.</p> <p>19 JUDGE BENTON: Okay. You may step down,</p> <p>20 Mr. Lockwood.</p> <p>21 Call your next witness, Mr. Diaz-Arrastia.</p> <p>22 MR. DIAZ-ARRASTIA: The next witness is</p> <p>23 going to be Ed Leyman who will be presented through</p> <p>24 video.</p> <p>25 JUDGE BENTON: Okay. How long is that?</p>	<p>1 the witness and it has the exhibit numbers behind it?</p> <p>2 MR. DIAZ-ARRASTIA: Correct. The --</p> <p>3 JUDGE WOOD: These have the second</p> <p>4 witness --</p> <p>5 MR. DIAZ-ARRASTIA: That's correct.</p> <p>6 JUDGE WOOD: -- and it has the exhibits</p> <p>7 behind it.</p> <p>8 MR. DIAZ-ARRASTIA: There will be three</p> <p>9 witnesses who will be presented by video.</p> <p>10 JUDGE BENTON: Okay.</p> <p>11 MR. DIAZ-ARRASTIA: A should be</p> <p>12 Mr. Leyman's deposition and you'll have both the</p> <p>13 transcript of the deposition I think with the cuts</p> <p>14 marked in it and then the exhibits will be numbered as</p> <p>15 they were referred to in the deposition.</p> <p>16 JUDGE BENTON: Okay.</p> <p>17 MR. LEE: And if I could make one other</p> <p>18 comment about the depositions. What we have done is we</p> <p>19 exchanged designations and agreed that it would be a lot</p> <p>20 easier for everyone involved if we just play it all the</p> <p>21 way through from beginning to end so this would include</p> <p>22 our offer of Mr. Leyman's testimony as well.</p> <p>23 MR. DIAZ-ARRASTIA: That is correct.</p> <p>24 MR. LEE: I think we've got it all right.</p> <p>25 There may be a glitch here and there, but I think</p>
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<p>1 MR. DIAZ-ARRASTIA: It's an hour and two</p> <p>2 minutes.</p> <p>3 JUDGE BENTON: Okay. Let's see here.</p> <p>4 JUDGE DAVIDSON: Why don't we watch it for</p> <p>5 a half an hour since we're used to watching television</p> <p>6 in half-hour segments and then take a break and then</p> <p>7 watch the last part.</p> <p>8 MR. DIAZ-ARRASTIA: And something to</p> <p>9 inform the panel. We ended up with different exhibit</p> <p>10 numbers in the depositions than in the books that we</p> <p>11 have been referring to so far.</p> <p>12 What we have tried to do to resolve that</p> <p>13 is you also have a book in front of you that has each</p> <p>14 deposition transcript with the exhibits attached as</p> <p>15 numbered in the depositions. So if you would follow in</p> <p>16 that, that would help. Have y'all -- have y'all found</p> <p>17 that?</p> <p>18 JUDGE BENTON: That's nice to know.</p> <p>19 MR. LEE: I don't think we need to take --</p> <p>20 JUDGE BENTON: About a half hour.</p> <p>21 MR. LEE: -- have her take it down. Do</p> <p>22 we?</p> <p>23 MR. DIAZ-ARRASTIA: Well, we have a</p> <p>24 transcript.</p> <p>25 JUDGE WOOD: So the A's have the -- one on</p>	<p>1 that --</p> <p>2 MR. DIAZ-ARRASTIA: We -- mistakes can</p> <p>3 always be made, but they have been reviewed by several</p> <p>4 eyes.</p> <p>5 MR. LEE: Yes. And we took out the</p> <p>6 objections. I don't know that it makes a whole lot of</p> <p>7 sense for us to interrupt for objections. I think that</p> <p>8 the panel is all experienced lawyers and judges and</p> <p>9 understands --</p> <p>10 JUDGE WOOD: Thank y'all so much.</p> <p>11 MR. LEE: I don't think you need to take</p> <p>12 it down. We have --</p> <p>13 JUDGE DAVIDSON: We have this.</p> <p>14 JUDGE WOOD: Sometimes the reporters like</p> <p>15 to go ahead and take it down if they're going to have to</p> <p>16 type it later and it just depends on your preference.</p> <p>17 Because if you have to prepare this, you will have to</p> <p>18 include this.</p> <p>19 JUDGE DAVIDSON: Yeah, but if you have --</p> <p>20 if this is on a disk, all you've got to give her is the</p> <p>21 disk and she can go --</p> <p>22 JUDGE WOOD: This is true.</p> <p>23 JUDGE DAVIDSON: -- copy, paste, insert.</p> <p>24 MR. LEE: Yeah.</p> <p>25 THE REPORTER: It's up to y'all.</p>

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<p style="text-align: right;">238</p> <p>1 MR. DIAZ-ARRASTIA: It is not necessary</p> <p>2 for you to write it down.</p> <p>3 (At this time the edited version of the</p> <p>4 videotaped deposition of Richard Leyman that was</p> <p>5 originally taken on April 29, 2010, was played in the</p> <p>6 arbitration. The court reporter at the arbitration</p> <p>7 reported such proceedings and this is her transcription</p> <p>8 of same.)</p> <p>9 MR. LEE: George, before you get started,</p> <p>10 I have just an objection for the record.</p> <p>11 Vinmar is participating in this deposition</p> <p>12 subject to and without waiver of its continuing</p> <p>13 objection to Triple A's jurisdiction in this case. As</p> <p>14 we've made it clear, we don't think there's an</p> <p>15 arbitration agreement, but -- so our participation is</p> <p>16 subject to and without waiver of that objection.</p> <p>17 RICHARD LEYMAN,</p> <p>18 having been first duly sworn, testified as follows:</p> <p>19 EXAMINATION</p> <p>20 BY MR. DIAZ-ARRASTIA:</p> <p>21 Q. Could you state your full name for the record,</p> <p>22 please?</p> <p>23 A. It's Edward Leyman.</p> <p>24 Q. Okay. Mr. Leyman, I am George Diaz-Arrastia.</p> <p>25 I am the lawyer that represents Tricon in this case.</p>	<p style="text-align: right;">240</p> <p>1 with MOAB Oil.</p> <p>2 Q. Your company has a contract with MOAB Oil?</p> <p>3 A. Yes.</p> <p>4 Q. And basically it involves that you broker</p> <p>5 deals and you get commissions, that sort of thing?</p> <p>6 A. Yes. And they provide telephone service,</p> <p>7 computer service, administrative service.</p> <p>8 Q. How would you describe what you do with MOAB?</p> <p>9 A. Brokering is bringing a buyer and seller</p> <p>10 together. My area of specialty is petrochemicals and</p> <p>11 gasoline blend stocks. There are other people in MOAB</p> <p>12 that do other products. I speak to potential buyers,</p> <p>13 potential sellers, and then negotiate an agreement where</p> <p>14 one purchases a product from the other.</p> <p>15 Q. Okay. It would be fair to say that what you</p> <p>16 do -- your mode of employment is that you broker deals</p> <p>17 in petrochemicals and gas blend stocks?</p> <p>18 A. Yes.</p> <p>19 Q. And how long have you been doing that, sir?</p> <p>20 A. I've been doing it for over 20 years.</p> <p>21 Q. And before that July 22nd, 2008, deal, had you</p> <p>22 brokered deals with Tricon before?</p> <p>23 A. Yes.</p> <p>24 Q. Many? A few?</p> <p>25 A. I don't know how to best answer that.</p>
<p style="text-align: right;">239</p> <p>1 Now, have you and I ever met before today?</p> <p>2 A. No.</p> <p>3 Q. Have we ever had any conversations?</p> <p>4 A. No.</p> <p>5 Q. I think that you have had one telephone</p> <p>6 conversation with a lawyer in my office called Christi</p> <p>7 Guerrini. Do you recall that?</p> <p>8 A. I believe so. I'm not sure. I think she</p> <p>9 called to see -- well, let me rephrase that. No, I</p> <p>10 don't really --</p> <p>11 Q. Do you --</p> <p>12 A. I really don't remember her calling, but I</p> <p>13 assume she did because she made contact with John.</p> <p>14 Q. Okay. Have you ever spoken with Mr. Lee?</p> <p>15 A. No.</p> <p>16 Q. Have you ever spoken with anyone in his</p> <p>17 office?</p> <p>18 A. No.</p> <p>19 Q. Sir, how long have you been employed by MOAB,</p> <p>20 Inc.?</p> <p>21 A. I've been associated with MOAB for</p> <p>22 approximately six years.</p> <p>23 Q. You say you're associated with MOAB. What's</p> <p>24 the nature of that association?</p> <p>25 A. I have my own company, and it's associated</p>	<p style="text-align: right;">241</p> <p>1 Q. Okay. Had you also brokered deals with</p> <p>2 Vinmar?</p> <p>3 A. Yes.</p> <p>4 Q. With what --</p> <p>5 A. My answer -- I guess a less frequent number of</p> <p>6 deals with Vinmar than with Tricon.</p> <p>7 Q. Okay. Before July 22, 2008, did you know Brad</p> <p>8 Lockwood?</p> <p>9 A. Yes.</p> <p>10 Q. Did you also know Rick Wilson before --</p> <p>11 A. Yes.</p> <p>12 Q. -- July 22, 2008?</p> <p>13 Had you brokered deals with both of them</p> <p>14 before July 22, 2008?</p> <p>15 A. Yes.</p> <p>16 Q. And I guess the way that you knew them is</p> <p>17 through brokering deals. Would that be correct?</p> <p>18 A. Yes.</p> <p>19 Q. It was not a personal friendship? You knew</p> <p>20 them in your business?</p> <p>21 A. Yes.</p> <p>22 Q. And what is your educational background, sir?</p> <p>23 How far did you get in school?</p> <p>24 A. I have a degree in chemical engineering and an</p> <p>25 MBA in marketing.</p>

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<p style="text-align: right;">242</p> <p>1 Q. And when did you get your chem-E degree?</p> <p>2 A. 1967.</p> <p>3 Q. Where did you get it?</p> <p>4 A. New York University School of Engineering.</p> <p>5 Q. And your MBA, when did you get that?</p> <p>6 A. Approximately 1972.</p> <p>7 Q. And what institution granted it?</p> <p>8 A. And it was Iona College.</p> <p>9 Q. Sir, is there a -- is it common or customary</p> <p>10 in your industry for the parties in a commodity</p> <p>11 transaction of this kind, like mixed xylene, not to</p> <p>12 speak directly with each other, but to have their</p> <p>13 communications happen through a broker such as yourself?</p> <p>14 A. Both are common. Some companies deal directly</p> <p>15 with each other. Others deal through brokers.</p> <p>16 Q. When a broker is involved in the transaction,</p> <p>17 is it common for the communications to always be through</p> <p>18 the broker instead of directly between the buyer and</p> <p>19 seller?</p> <p>20 A. Yes.</p> <p>21 Q. Is that what happened in the transaction</p> <p>22 regarding mixed xylene on July 22nd, 2008, between</p> <p>23 Vinmar and Tricon?</p> <p>24 A. Yes. When the deal was negotiated on</p> <p>25 July 22nd, I was speaking to both parties and, to my</p>	<p style="text-align: right;">244</p> <p>1 Lockwood at Tricon.</p> <p>2 Q. Okay. I guess what I'm trying to find out is</p> <p>3 what is -- what do you mean when you use the words "firm</p> <p>4 bid"?</p> <p>5 A. That means it is a commitment in this case by</p> <p>6 the buyer. It's not an indication. In the brokering</p> <p>7 business, you can get an indication, which is just, as</p> <p>8 stated, an indication. I'd like to buy this product at</p> <p>9 this price, but there's no firm commitment to do so. A</p> <p>10 firm bid is that firm commitment to do so.</p> <p>11 Q. So it would be fair to say that a firm bid is,</p> <p>12 "If these terms are met, we have a deal"?</p> <p>13 A. Yes.</p> <p>14 Q. Did Rick Wilson give you authority to</p> <p>15 communicate that firm bid to Brad Lockwood at Tricon?</p> <p>16 A. Yes.</p> <p>17 Q. And he gave that to you over the telephone?</p> <p>18 A. Yes.</p> <p>19 Q. And did you also have authority from Brad</p> <p>20 Lockwood and Tricon to communicate with Rick Wilson --</p> <p>21 A. Yes.</p> <p>22 Q. -- at Vinmar?</p> <p>23 And how did Brad give you that authority?</p> <p>24 A. Brad gave me a firm offer on mixed xylenes,</p> <p>25 again specifying quantity, quality, delivery time,</p>
<p style="text-align: right;">243</p> <p>1 knowledge, they were not speaking to each other.</p> <p>2 Q. In a transaction where the parties do not</p> <p>3 speak to each other but speak only through the broker,</p> <p>4 does the broker then communicate the terms of the deal</p> <p>5 to each of the parties?</p> <p>6 A. Yes.</p> <p>7 Q. And does the broker have authority from each</p> <p>8 of the parties to do that?</p> <p>9 A. Yes.</p> <p>10 Q. In the July 22nd, 2008, transaction between</p> <p>11 Tricon and Vinmar, did you have authority from Rick</p> <p>12 Wilson and Vinmar to communicate with Tricon and Brad</p> <p>13 Lockwood?</p> <p>14 A. Yes.</p> <p>15 Q. How did you get that authority?</p> <p>16 A. Mr. Wilson gave me a firm bid over the phone</p> <p>17 to purchase the mixed xylenes.</p> <p>18 Q. So it was given to you over the telephone?</p> <p>19 A. Yes.</p> <p>20 Q. And when you say that Mr. Wilson gave you a</p> <p>21 firm bid, what does that mean?</p> <p>22 A. He specified the product, the price, the</p> <p>23 quality, the timing of what he was looking to purchase,</p> <p>24 and all those commercial terms were incorporated in a</p> <p>25 firm bid, which I then called and showed to Brad</p>	<p style="text-align: right;">245</p> <p>1 price.</p> <p>2 Q. Was this firm offer in response to the firm</p> <p>3 bid?</p> <p>4 A. No. I think the offer came first, and then</p> <p>5 the bid was the reply to it.</p> <p>6 Q. Okay. And did Mr. Lockwood also communicate</p> <p>7 this authority to you over the telephone?</p> <p>8 A. Yes.</p> <p>9 Q. And you had authority from Mr. Lockwood to</p> <p>10 make this firm offer?</p> <p>11 A. Yes.</p> <p>12 Q. And that is a -- is that normal and typical</p> <p>13 way that you do business?</p> <p>14 A. Yes.</p> <p>15 Q. Does that, in general, describe the way you do</p> <p>16 business in all of the transactions you have done here</p> <p>17 at MOAB?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Leyman, I'd like to call your attention to</p> <p>20 what has been marked as Exhibit No. 1 to your</p> <p>21 deposition. It is a document that was given to me by</p> <p>22 your counsel. That's why at the bottom it has the</p> <p>23 legend MOAB. And this document begins with MOAB No. 4</p> <p>24 and ends with MOAB No. 14. Do you see that, sir?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">246</p> <p>1 Q. Do you recognize what this document is?</p> <p>2 A. It's the IM communication between myself and</p> <p>3 Brad Lockwood.</p> <p>4 Q. Okay. And on top of the first page, it</p> <p>5 says, "Brad Lockwood." And that would indicate that</p> <p>6 these were communications with Mr. Lockwood?</p> <p>7 A. Yes.</p> <p>8 Q. And then right under that, there's the date</p> <p>9 7-22-08.</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And does that indicate that these are instant</p> <p>14 messages between you and Mr. Lockwood that took place on</p> <p>15 July 22, 2008?</p> <p>16 A. Yes.</p> <p>17 Q. If you would turn to the page -- to MOAB 5 and</p> <p>18 go towards the bottom of the page, really the last line</p> <p>19 on that page, which says "10:48:31 a.m." Do you see</p> <p>20 that, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And I suppose that that refers to this</p> <p>23 is a communication that is happening at 10:48 and 31</p> <p>24 seconds in the morning on July 22, 2008. Would that be</p> <p>25 the right way to read that?</p>	<p style="text-align: right;">248</p> <p>1 telephone discussions between you and Mr. Wilson?</p> <p>2 A. Yes.</p> <p>3 Q. If you would look at 12:09:39 where it says,</p> <p>4 "Ed." And that would be you?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So this would be a communication -- an</p> <p>7 IM communication that you sent to Mr. Lockwood at</p> <p>8 12:09:39 p.m.?</p> <p>9 A. Yes.</p> <p>10 Q. And it said, "All done but call me"?</p> <p>11 A. Yes.</p> <p>12 Q. What do you mean "All done but call me"?</p> <p>13 A. That there was an agreement of Vinmar -- with</p> <p>14 Vinmar that Tricon had made a proposal. Vinmar had</p> <p>15 countered the proposal and Brad accepted the proposal.</p> <p>16 And going back to Mr. Wilson at Vinmar, there was</p> <p>17 acceptance and a summary of all the terms and conditions</p> <p>18 being discussed by me with both parties.</p> <p>19 Q. Okay. When you say "All done," do you mean</p> <p>20 the deal is all done?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So by 12:09:39 p.m., in your mind there</p> <p>23 had been a firm offer from Tricon, Brad Lockwood, and a</p> <p>24 firm bid from Rick Wilson at Vinmar?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">247</p> <p>1 A. Yes.</p> <p>2 Q. And it is an instant message being sent to you</p> <p>3 by Mr. Lockwood?</p> <p>4 A. Yes.</p> <p>5 Q. Because it says "Brad" right after the time.</p> <p>6 Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And it says, "I'd like to show</p> <p>9 you" -- "I'd like to show Vinmar the offer and bring in</p> <p>10 a firm bid." Do you see that, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Is this when Mr. Lockwood gave you the firm</p> <p>13 offer that you talked about a moment ago? Would this --</p> <p>14 it appear to be at about this time?</p> <p>15 A. It was shortly thereafter. This particular</p> <p>16 offer was not acceptable to Vinmar because of the</p> <p>17 quality, and there was a subsequent offer made to Vinmar</p> <p>18 with a different xylene quality.</p> <p>19 Q. Okay. So at the time while there were IM</p> <p>20 discussions going on between you and Mr. Lockwood, there</p> <p>21 were also telephone discussions going on between you and</p> <p>22 Mr. Lockwood?</p> <p>23 A. Yes.</p> <p>24 Q. And at this same time, there were also IM</p> <p>25 discussions going on between you and Mr. Wilson and also</p>	<p style="text-align: right;">249</p> <p>1 Q. Let me put it to you this way. At</p> <p>2 12:09:39 p.m., had Mr. Wilson given you a firm bid to</p> <p>3 take to Tricon?</p> <p>4 A. Yes.</p> <p>5 Q. And by 12:09:39 p.m., had Mr. Wilson</p> <p>6 authorized you to make that firm bid?</p> <p>7 A. Yes.</p> <p>8 Q. And, similarly, by 12:09:39 p.m., had Brad</p> <p>9 Lockwood given you a firm offer to take to Vinmar?</p> <p>10 A. Yes.</p> <p>11 Q. And by 12:09:39 p.m., had Mr. Lockwood</p> <p>12 authorized you to communicate that firm offer to Vinmar?</p> <p>13 A. Yes.</p> <p>14 Q. You say, "But call me." Why did you want</p> <p>15 Mr. Lockwood to call you?</p> <p>16 A. To go over all the terms and conditions that</p> <p>17 both parties had just agreed to.</p> <p>18 Q. Okay. Right after the next entry from you on</p> <p>19 Exhibit 1, you say, "Vinmar is asking to declare</p> <p>20 discharge port no later than August 15th." Do you see</p> <p>21 that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. What happened here?</p> <p>24 A. After the deal was negotiated, two points were</p> <p>25 not discussed during the negotiation. One was at what</p>

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<p style="text-align: right;">250</p> <p>1 point does the buyer declare to the seller where he</p> <p>2 wants the product to be delivered. And Rick Wilson</p> <p>3 proposed nominating August 15th as that day of</p> <p>4 notification.</p> <p>5 Q. Okay. And, sir, if you will go down a few</p> <p>6 lines. Look at 12:39:24 p.m. "Ed."</p> <p>7 A. Yeah.</p> <p>8 Q. And there are a few lines ahead of that, and</p> <p>9 there's some back and forth on the dates for the</p> <p>10 declaration of discharge port?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. But at 12:39:24 p.m., it says, "Ed," which is</p> <p>15 you. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "Friday, the 8th, is okay"?</p> <p>18 A. Yes.</p> <p>19 Q. And just a few seconds later is it Brad</p> <p>20 saying, "Okay"?</p> <p>21 A. Yes.</p> <p>22 Q. Does this reflect an agreement on Friday, the</p> <p>23 8th of August, as the date to declare the discharge</p> <p>24 port?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">252</p> <p>1 A. Yes.</p> <p>2 Q. And that would be over the telephone; it's not</p> <p>3 reflected in the IM's?</p> <p>4 A. That's correct.</p> <p>5 Q. And Mr. Lockwood had agreed you -- had</p> <p>6 authorized you -- let me put it this way. Had</p> <p>7 Mr. Lockwood authorized you to agree on the 30-day</p> <p>8 payment period?</p> <p>9 A. Yes.</p> <p>10 Q. And had Mr. Wilson similarly authorized you to</p> <p>11 agree on the 30-day payment period?</p> <p>12 A. Yes.</p> <p>13 Q. And was it after that that Mr. Wilson</p> <p>14 said, "Can we change it to an on site LC"?</p> <p>15 A. Yes.</p> <p>16 Q. And did he authorize you to communicate that</p> <p>17 to Mr. Lockwood?</p> <p>18 A. Yes.</p> <p>19 Q. And that's what you did --</p> <p>20 A. Yes.</p> <p>21 Q. -- here in this IM?</p> <p>22 If you will go to the next page, sir, if</p> <p>23 you would look just a little below the middle of the</p> <p>24 page at 4:12:27 p.m. from Brad.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">251</p> <p>1 Q. Okay. And, again, had Mr. Lockwood authorized</p> <p>2 you to communicate to Mr. Wilson that the 8th was okay</p> <p>3 with him?</p> <p>4 A. Yes.</p> <p>5 Q. And had Mr. Wilson authorized you to</p> <p>6 communicate to Mr. Lockwood that the 8th was okay with</p> <p>7 him?</p> <p>8 A. Yes.</p> <p>9 Q. Was an agreement reached on the 8th?</p> <p>10 A. Yes.</p> <p>11 Q. Just a few lines down after that, if you look</p> <p>12 at 1:06:31 p.m., again, Ed, it says, "Vinmar asking if</p> <p>13 you are agreeable to do LC site." Do you see that, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what that was about?</p> <p>16 A. Yes. The second point that was not negotiated</p> <p>17 initially was the payment terms. Subsequent to being</p> <p>18 all done, the parties agreed on 30 days after a bill of</p> <p>19 lading date.</p> <p>20 Subsequently Rick came back requesting</p> <p>21 that payment be made with a documentary LC, to do LC at</p> <p>22 site, and I communicated that to Brad at Tricon.</p> <p>23 Q. Okay. So there had -- there had been a</p> <p>24 discussion between you and Mr. Lockwood and you and</p> <p>25 Mr. Wilson regarding a 30-day payment period?</p>	<p style="text-align: right;">253</p> <p>1 Q. Where it says -- again, immediately before</p> <p>2 that at 4:11:52 p.m., Ed, you, is saying, "Vinmar asking</p> <p>3 again on payment terms. LC site, question mark."</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Then Brad's response at 4:12:27 p.m. is that,</p> <p>7 "Yes, we accept LC at site"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is this where Mr. Lockwood told you,</p> <p>10 "Yes, it's okay with me to change the payment terms to a</p> <p>11 letter of credit on site"?</p> <p>12 A. Yes.</p> <p>13 Q. And did Mr. Lockwood authorize you to</p> <p>14 communicate that to Mr. Wilson?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that?</p> <p>17 A. Yes.</p> <p>18 Q. And did Mr. Wilson accept that?</p> <p>19 A. Yes.</p> <p>20 Q. Mr. Leyman, after -- is it your custom after a</p> <p>21 deal is made the way we've been talking about to send</p> <p>22 some kind of written confirmation to the parties?</p> <p>23 A. Yes.</p> <p>24 Q. Is that something you always do?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">254</p> <p>1 Q. I show you what's marked as Exhibit 2 to your 2 deposition, sir. Do you recognize that document? 3 A. Yes. 4 Q. Is this the confirmation that you sent on 5 July 22, 2008 -- or I should say the first confirmation 6 that you sent? 7 A. Yes. 8 Q. And this reflects the 30-day payment term that 9 was initially agreed to? 10 A. Yes. 11 Q. If you would look at the first page of 12 Exhibit 2, it appears to have been e-mailed to Rick 13 Wilson? 14 A. Okay. Yes. This would have been sent to 15 Vinmar. 16 Q. If you look at Exhibit 2, second page, is 17 that -- it says "MOAB Oil, Inc.," on top. Is this MOAB 18 Oil's letterhead? I just want to find out if that's 19 MOAB Oil's letterhead. 20 A. Oh, I'm sorry. Yes. 21 Q. Is this a form that you always use for these 22 transactions? 23 A. Yes. 24 Q. Let me ask you this. In the -- initially 25 there was an -- you said there was an agreement on</p>	<p style="text-align: right;">256</p> <p>1 A. Yes. 2 Q. Okay. Is this the confirmation that was sent 3 after agreement was reached on the letter of credit as 4 opposed to the 30 days? 5 A. Yes. 6 Q. Sir, does either Exhibit 2 or Exhibit 3 7 refer -- actually on the -- on the delivery side, both 8 of these refer to the August 8th declaration of 9 discharge port. Correct, sir? 10 A. Yes. 11 Q. Is Exhibit 3 also on MOAB's letterhead? 12 A. Yes. 13 Q. With regard to both Exhibit 2 and Exhibit 3, 14 sir, did you draft them? 15 A. Yes. 16 Q. Did you draft them on behalf of both parties, 17 Vinmar and Tricon? 18 A. Yes. 19 Q. And did you draft them to represent the terms 20 of the deal that you had negotiated for them? 21 A. Yes. 22 Q. At the bottom of both Exhibit 2 and Exhibit 3, 23 there is a statement that says, "If there is anything 24 outlined contrary to your understanding of our 25 agreement, please notify us immediately." Do you see</p>
<p style="text-align: right;">255</p> <p>1 30-day term, which was later changed, and then there was 2 discussion about discharge port as well? 3 A. Yes. 4 Q. And was it your testimony that both of these 5 discussions occurred after you believed that there was a 6 deal made, that a firm bid had been made and a firm 7 offer had been made? 8 A. Yes. 9 Q. In the industry, can deals be made although 10 there may be some terms that are left to be negotiated 11 between the parties? 12 A. Yes, sometimes. 13 Q. I'm showing you now what's Exhibit 3. Do you 14 recognize that document, Mr. Leyman? 15 A. Yes. 16 Q. Is this also a confirmation? 17 A. Yes. 18 Q. And did you send this confirmation to both 19 Rick Wilson and Brad Lockwood? 20 A. Yes. 21 Q. Okay. And is it also on MOAB's letterhead? 22 A. Yes. 23 Q. And if you would look sort of a third of the 24 way down where it says "Amended payment terms." Do you 25 see that, sir?</p>	<p style="text-align: right;">257</p> <p>1 that, sir? 2 A. Yes. 3 Q. That's in both Exhibit 2 and Exhibit 3? 4 A. Yes. 5 Q. Is that always in the confirmation memos that 6 you send? 7 A. Yes. 8 Q. And why do you include that? 9 A. Well, everyone is human. And on a rare case 10 where there is a misunderstanding or miscommunication, 11 it gives everyone the opportunity to see if there's any 12 mistakes and to correct them immediately. 13 Q. Okay. And would it be your expectation that 14 if you made a mistake one of the parties would call it 15 to your attention? 16 A. Yes. Or I would notice the mistake as well. 17 Q. And, in fact, someone did call you to point 18 out a mistake on Exhibit 2 and Exhibit 3. Isn't that 19 so? 20 A. Yes. 21 Q. And what was that mistake? 22 A. It was the price. 23 Q. Who pointed out a mistake on the price to you? 24 A. Brad Lockwood advised me of the price 25 difference.</p>

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<p style="text-align: right;">258</p> <p>1 Q. Did Mr. Wilson also advise you that there was</p> <p>2 a mistake on the price?</p> <p>3 A. No.</p> <p>4 Q. If you would turn back to Exhibit 1, the IM's,</p> <p>5 sir. And look at Page MOAB 9.</p> <p>6 A. Yes.</p> <p>7 Q. If you would look just a little bit below the</p> <p>8 middle of the page at 10:41:09 a.m., a message from</p> <p>9 Brad, where it says, "Please correct that Vinmar thing."</p> <p>10 A. Yes.</p> <p>11 Q. And right afterwards you reply, "Was sent out</p> <p>12 this a.m."?</p> <p>13 A. Yes.</p> <p>14 Q. Is he referring to the mistake on the price?</p> <p>15 A. Yes.</p> <p>16 Q. And what you're saying was sent out this a.m.</p> <p>17 is the correction?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Mr. Leyman, after getting our papers</p> <p>20 straight, let me now hand you what is the real</p> <p>21 Exhibit 4. And is that the confirmation that reflects</p> <p>22 the corrected price?</p> <p>23 A. Yes.</p> <p>24 Q. And about a third of the way down on Exhibit 4</p> <p>25 you see the legend Amended Price?</p>	<p style="text-align: right;">260</p> <p>1 And look again at MOAB 9, near the bottom of the page of</p> <p>2 MOAB 9. Do you see at 1:39:30 p.m. where it</p> <p>3 says "Ed" -- and that would be you. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. It says, "Yep. Would you have any interest in</p> <p>6 buying back the 5 KT MX you sold to Vinmar"?</p> <p>7 A. Yes.</p> <p>8 Q. Tell me what that's about.</p> <p>9 A. That's just being a broker. Sometimes on a</p> <p>10 Monday someone would sell. On Tuesday they would buy</p> <p>11 back. I was just inquiring there if Tricon was still on</p> <p>12 a sale side or possibly buying.</p> <p>13 Q. Did Mr. Wilson or anybody at Vinmar contact</p> <p>14 you to tell you that you might be -- that they might be</p> <p>15 interested in selling the MX they had just bought?</p> <p>16 A. I don't have any recollection of Mr. Wilson</p> <p>17 asking me to try to sell -- resell his cargo. In fact,</p> <p>18 I don't recall speaking to Mr. Wilson that day, but I</p> <p>19 assume that I did because being a broker -- he had been</p> <p>20 the buyer on Monday. I would see if he would be a</p> <p>21 potential buyer on Tuesday. But I don't have any</p> <p>22 recollection of actually speaking to him.</p> <p>23 Q. Okay. And, Mr. Leyman, is Exhibit 4 the last</p> <p>24 confirmatory memoranda that you sent to the parties on</p> <p>25 this deal?</p>
<p style="text-align: right;">259</p> <p>1 A. Yes.</p> <p>2 Q. And this is the correct price that was agreed</p> <p>3 to between the parties?</p> <p>4 A. Yes.</p> <p>5 Q. And, again, is Exhibit 4 on MOAB letterhead?</p> <p>6 A. Yes.</p> <p>7 Q. And was Exhibit 4 drafted by you?</p> <p>8 A. Yes.</p> <p>9 Q. Was it drafted by you on behalf of both</p> <p>10 parties?</p> <p>11 A. Yes.</p> <p>12 Q. And was it drafted to reflect the terms of</p> <p>13 their agreement?</p> <p>14 A. Yes.</p> <p>15 Q. The agreement that the parties authorized to</p> <p>16 communicate to each other?</p> <p>17 A. Yes.</p> <p>18 Q. Now, Mr. Leyman, do Exhibits 2, 3 or 4 say</p> <p>19 anything about whether the product needed to have --</p> <p>20 needed to be made of U.S. origin?</p> <p>21 A. No.</p> <p>22 Q. Why do not they -- why do they not say</p> <p>23 anything about that?</p> <p>24 A. Because it was not discussed in negotiations.</p> <p>25 Q. If you will turn back to Exhibit 1, the IM's.</p>	<p style="text-align: right;">261</p> <p>1 A. Yes.</p> <p>2 Q. And you sent it to both Vinmar and Tricon?</p> <p>3 A. Yes.</p> <p>4 Q. If you would now go to Page MOAB 12 in</p> <p>5 Exhibit 1. On the top of that page is the date 7-31-08.</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. Are these instant messages between you and</p> <p>9 Mr. Lockwood on July 31st?</p> <p>10 A. Yes.</p> <p>11 Q. A little over a week after the transaction?</p> <p>12 A. Yes.</p> <p>13 Q. If you would look at about the middle of the</p> <p>14 page where it says 10:19:09 a.m.?</p> <p>15 A. Yes.</p> <p>16 Q. It says, "Ed." That is you. It</p> <p>17 says, "Vinmar's MX still available but has no interest</p> <p>18 in selling anywhere close to your price ideas."</p> <p>19 A. Yes.</p> <p>20 Q. Do you see that, sir?</p> <p>21 A. Yeah.</p> <p>22 Q. What are you referring to when you say that?</p> <p>23 A. After these earlier messages, I called Rick</p> <p>24 Wilson, asked him if the cargo that he bought from</p> <p>25 Tricon was still available. He said it was. I told him</p>

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<p style="text-align: right;">262</p> <p>1 that Tricon is indicating interest in buying xylenes.</p> <p>2 I gave him the indicated price. He</p> <p>3 indicated that he would look to resell the barrels but</p> <p>4 at a profit, and indicated 1350 as the sales price.</p> <p>5 Q. Okay. And that is -- when you say -- in the</p> <p>6 next line where you say, "Ed, at 1300 plus he would</p> <p>7 consider"?</p> <p>8 A. Yes.</p> <p>9 Q. "He" being Mr. Wilson?</p> <p>10 A. Yes.</p> <p>11 Q. And these are communications you are having</p> <p>12 with Mr. Lockwood?</p> <p>13 A. Yes.</p> <p>14 Q. These were telephone conversations that you</p> <p>15 had with Mr. Wilson about whether they would sell the MX</p> <p>16 they had just bought?</p> <p>17 A. Yes.</p> <p>18 Q. And Mr. Wilson communicated to you that he</p> <p>19 would at that price where they would make a profit?</p> <p>20 A. Yes.</p> <p>21 Q. Would Mr. Wilson be able to sell mixed xylene</p> <p>22 if he had not bought it?</p> <p>23 A. Theoretically you can sell, sure. That was</p> <p>24 not the purpose of the call, though.</p> <p>25 Q. Okay. Well, what was the purpose of the call?</p>	<p style="text-align: right;">264</p> <p>1 Exhibit 1 then, which is the MOAB document. And take a</p> <p>2 look at Page MOAB 14, which is the last page in the</p> <p>3 exhibit.</p> <p>4 A. Okay.</p> <p>5 Q. Okay. And if you would flip back a couple of</p> <p>6 pages, this appears to still be the IM's between you and</p> <p>7 Mr. Lockwood --</p> <p>8 A. Right.</p> <p>9 Q. -- on July 31st?</p> <p>10 A. Yes.</p> <p>11 Q. That's correct?</p> <p>12 A. Yes.</p> <p>13 Q. And at the top of MOAB 14 at 4:45:59 p.m., is</p> <p>14 that a message from you that says, "Ed, got a call from</p> <p>15 Vinmar"?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is this the call that you were talking about a</p> <p>18 moment ago that Mr. Wilson gave you about the U.S.</p> <p>19 origin?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And was this when you let Mr. Lockwood</p> <p>22 know that you had received that call?</p> <p>23 A. Yes.</p> <p>24 Q. Had you received that call close in time to</p> <p>25 4:45:59 p.m. on July 31st?</p>
<p style="text-align: right;">263</p> <p>1 A. To see if he specifically wanted to resell the</p> <p>2 barrels he bought from Tricon.</p> <p>3 Q. And his response was?</p> <p>4 A. He indicated that he would sell the barrels if</p> <p>5 he could obtain a price of 1350.</p> <p>6 Q. And he -- and he couldn't sell those barrels</p> <p>7 unless he had bought them. Would that be right?</p> <p>8 A. Again, just a point of clarification. One --</p> <p>9 in commodity trading, one can sell a product that they</p> <p>10 don't necessarily own.</p> <p>11 Q. Mr. Leyman, when did you first hear that</p> <p>12 Vinmar was saying that the mixed xylene had to be of</p> <p>13 U.S. origin?</p> <p>14 A. On the afternoon of the 31st of July.</p> <p>15 Q. Okay. And how did you hear that?</p> <p>16 A. Mr. Wilson sent me an instant message asking</p> <p>17 me to call him. I called him. And he told me that the</p> <p>18 xylenes he purchased from Tricon needed to be of U.S.</p> <p>19 origin.</p> <p>20 Q. Okay. And what was your response to him?</p> <p>21 A. I told him that that was not what was</p> <p>22 negotiated, that it was not discussed, and the sale was</p> <p>23 based on a delivered CFR first half September basis with</p> <p>24 no origin guarantee.</p> <p>25 Q. Okay. Well, look then -- let's go back to</p>	<p style="text-align: right;">265</p> <p>1 A. There were one or two calls that afternoon.</p> <p>2 They would probably be close to that time.</p> <p>3 Q. On 4:46:42 p.m., you say, "Ed, want any</p> <p>4 discussions to go through MOAB since we brokered the</p> <p>5 deal?" Do you see that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me what that was about.</p> <p>8 A. Vinmar requested that any discussions</p> <p>9 regarding the U.S. origin be done through MOAB, that</p> <p>10 they preferred speaking through MOAB than speaking</p> <p>11 directly to Tricon.</p> <p>12 Q. So they wanted to do it just the way the deal</p> <p>13 had originally been put together?</p> <p>14 A. Yes.</p> <p>15 Q. Where you would be an agent for both sides?</p> <p>16 A. Yes.</p> <p>17 Q. About halfway down the page,</p> <p>18 4:50:34 p.m., "Ed, I repeated that that was not</p> <p>19 negotiated and a guarantee of U.S. origin only was not</p> <p>20 agreed upon." Do you see that, sir?</p> <p>21 A. Yes.</p> <p>22 Q. You're telling Mr. Lockwood what you had told</p> <p>23 Mr. Wilson over the telephone. Is that right?</p> <p>24 A. That is correct.</p> <p>25 Q. And that's at 4:50, just a few minutes after</p>

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<p style="text-align: right;">266</p> <p>1 the IM's at the top of the page. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. So the best of your recollection is that these</p> <p>4 IM's are occurring a short time after your conversation</p> <p>5 with Mr. Wilson --</p> <p>6 A. Yes.</p> <p>7 Q. -- over the telephone?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Leyman, do you still broker deals with</p> <p>10 Vinmar today?</p> <p>11 A. Yeah. I haven't done anything recently, but I</p> <p>12 still deal with Vinmar.</p> <p>13 Q. Did you broker deals with Vinmar after the</p> <p>14 July 22, 2008, deal with Tricon?</p> <p>15 A. No.</p> <p>16 Q. Do you still deal with them to see if there</p> <p>17 are deals to be made?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any problem with working with</p> <p>20 Vinmar?</p> <p>21 A. No.</p> <p>22 EXAMINATION</p> <p>23 BY MR. LEE:</p> <p>24 Q. Okay. Mr. Leyman, it's my turn to ask you</p> <p>25 some questions. I introduced myself a little bit</p>	<p style="text-align: right;">268</p> <p>1 Q. You tell Mr. Lockwood, "See possible 5 KT FOB</p> <p>2 H/TC any August. MX buyer indicated paying 4 to 402</p> <p>3 range." Right?</p> <p>4 A. Yes.</p> <p>5 Q. Now, was that a reference to your conversation</p> <p>6 with Mr. Wilson that he may be willing to buy 5 KT of MX</p> <p>7 FOB H/TC?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. "H" being Houston?</p> <p>10 A. Yes.</p> <p>11 Q. And "TC" being Texas City?</p> <p>12 A. Yes.</p> <p>13 Q. First of all, at 9:29:04 a.m., Mr. Lockwood</p> <p>14 says he would offer 5 KT FOB Houston, Texas City,</p> <p>15 Corpus, any August at \$4.10 a gallon. P and C basis not</p> <p>16 reported.</p> <p>17 A. Yes.</p> <p>18 Q. Now, is that a -- is that a firm offer?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Where did the -- you mentioned to</p> <p>21 Mr. Wilson in his -- in your instant message to him at</p> <p>22 9:34 that the quality would be 52 -- that's 5211/20 BR,</p> <p>23 which I take it is -- 5211 would be the reference to the</p> <p>24 ASTM --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">267</p> <p>1 earlier. My name is Stephen Lee. I represent Vinmar.</p> <p>2 You and I have never met. Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Do you recognize Exhibit 6?</p> <p>5 A. Yes.</p> <p>6 Q. What is it, sir?</p> <p>7 A. It's IM messages between myself and Rick</p> <p>8 Wilson.</p> <p>9 Q. Okay. And the first page of Exhibit 6 are IM</p> <p>10 messages between you and Mr. Wilson on July 22, 2008.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then the second page would be instant</p> <p>14 message exchanges between you and Mr. Wilson on July 31,</p> <p>15 2008?</p> <p>16 A. Yes.</p> <p>17 Q. As I read these instant messages -- and it</p> <p>18 starts with you talking to Mr. Wilson around 9:19 in the</p> <p>19 morning on July the 22nd where Rick is asking you if</p> <p>20 there's any MX available. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you pick up on Exhibit 1, which is</p> <p>23 your instant message exchanges with Mr. Lockwood</p> <p>24 starting at 9:25. Do you see that? Right here, sir.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">269</p> <p>1 Q. -- standard?</p> <p>2 And then 20 would be a maximum of 20</p> <p>3 bromine?</p> <p>4 A. Bromine index.</p> <p>5 Q. Bromine index. Okay. Is that an indication</p> <p>6 of max 20?</p> <p>7 A. Yes.</p> <p>8 Q. Where did that quality reference come from?</p> <p>9 A. How best to answer that? That was Vinmar's</p> <p>10 requirement for the quality and that's one of the</p> <p>11 standard qualities of mixed xylenes in the Gulf Coast.</p> <p>12 Q. And so you made -- you made the firm offer to</p> <p>13 Vinmar at 9:34 on July the 22nd. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that would be for FOB. Explain what FOB</p> <p>16 Houston, Texas City, Corpus means.</p> <p>17 A. Houston, Texas City, Corpus would be the</p> <p>18 possible load ports of the product, Houston, Texas City,</p> <p>19 or Corpus Christi, Texas. FOB I guess -- I'm not</p> <p>20 totally aware of what the Incoterms mean, but I think</p> <p>21 it's free on board or something similar to that.</p> <p>22 Q. In other words, the product would be delivered</p> <p>23 to Vinmar or to the buyer at one of those locations and</p> <p>24 the buyer would be responsible for freight? Is that</p> <p>25 your understanding?</p>

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<p style="text-align: right;">270</p> <p>1 A. Yes. The buyer would be responsible for -- 2 if -- yeah, to load a vessel. 3 Q. Okay. And Mr. Wilson doesn't respond with a 4 "Yes" or "No." Correct? 5 A. Yes, that's correct. 6 Q. All right. He says he's on the phone. He's 7 talking with his salesperson. And at 9:57 you tell 8 Mr. Wilson that energy is moving lower; the seller is 9 asking for a counterbid. Correct? 10 A. Yes. 11 Q. The seller in this instance would be Tricon? 12 A. Yes. 13 Q. At 10:00 o'clock you tell Mr. Wilson that 14 there's a second MX seller asking if buyer would 15 purchase CFR main Asian ports, arrival basis loading 16 USGC first half of August? 17 A. Yes. 18 Q. Do you know who that second MX seller was that 19 you were referring to? 20 A. That was also Tricon. 21 Q. And where did you get that information? From 22 Mr. Lockwood? 23 A. Yes. 24 Q. Loading USGC, is that a reference to the U.S. 25 Gulf Coast?</p>	<p style="text-align: right;">272</p> <p>1 A. Yes. 2 Q. All right. Now we're talking about selling 3 5 metric tons on a FCC basis. At least that's what you 4 reported to Mr. Wilson at 10:00 o'clock, that there was 5 somebody that was interested in that. Correct? 6 A. Yes. 7 Q. At the 10:00 o'clock instant message to 8 Mr. Wilson, is that what you would call an indication of 9 an offer or is it actually a firm offer at that point? 10 A. The -- 11 Q. Where you say, "Second MX seller asking if 12 buyer would purchase"? 13 A. That's an indication. 14 Q. All right. And then you ask Mr. Wilson at 15 10:05 whether he has any bid. Correct? 16 A. Yes. 17 Q. Are you asking him if he wants to bid against 18 this indication -- or make a bid against the indication 19 for the CFR delivery? 20 A. Yes. Prior to that, I spoke to Rick by 21 telephone and he did not have any interest any longer in 22 buying FOB the Gulf Coast. His preference was to buy 23 something on a delivered CFR basis to either Korea or 24 Taiwan. He indicated that he had two possible buyers 25 and he would prefer seeing offers on a delivered basis.</p>
<p style="text-align: right;">271</p> <p>1 A. Yes. 2 Q. All right. And the CFR, that's a different 3 freight term than the FOB. Correct? 4 A. Yes. 5 Q. CFR -- is it your understanding that CFR means 6 that the seller is responsible to ship the product even 7 though the buyer is still paying for shipping? 8 A. Yes. 9 Q. First of all, this back and forth that we see 10 on Exhibit 1 and Exhibit 6, is this fairly typical of 11 how your day might go when you're working a deal? 12 A. Yes. 13 Q. All right. And there may be various offers 14 and various bids that may take -- it may take days, it 15 may take hours, it may take minutes to bring two parties 16 together? 17 A. Yes. 18 Q. And sometimes you're successful and sometimes 19 you're not. Right? 20 A. Yes. 21 Q. Okay. And when I'm -- sir, if I'm looking 22 back then I guess at Exhibit 1, which is Mr. Lockwood's 23 exchanges with you, and we see that -- we first started 24 off talking about 5 KT FOB and now we're talking about 25 selling 5 -- KT is metric tons. Correct?</p>	<p style="text-align: right;">273</p> <p>1 Q. Okay. 2 A. I spoke to Tricon and he said he would be able 3 to sell or offer on a CFR basis. 4 Q. All right. And did Tricon -- is this 5 Mr. Lockwood? He also told you that it would be loading 6 out of the U.S. Gulf Coast, at least what you reported 7 to mister -- correct? 8 A. That was his indication, that he can load 9 barrels first half August out of the Gulf Coast and sell 10 it on a delivery basis to Asia. That was not acceptable 11 to Wilson. He indicated the timing was very important, 12 that he needed a guarantee arrival of September 15. 13 Q. All right. 14 A. So that offer was not pursued on that basis. 15 Q. And then if we go all the way down to 10:38 16 where you see Mr. Lockwood saying, "Show Vinmar" -- 17 A. Yes. 18 Q. -- "I can sell" -- 19 A. Yes. 20 Q. -- "1360 a metric ton." 21 And he goes on to report a very -- a 22 number of different aspects of an offer. Correct? 23 A. Yes. 24 Q. Is that a firm offer? 25 A. Yes.</p>

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<p style="text-align: right;">274</p> <p>1 Q. All right. What Mr. Lockwood was offering was</p> <p>2 a product quality that met the ASTM D843?</p> <p>3 A. That's correct.</p> <p>4 Q. All right. And you've already told us this</p> <p>5 morning that Vinmar was not interested in that</p> <p>6 particular quality. Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. They wanted the ASTM 5211?</p> <p>9 A. Yes.</p> <p>10 Q. All right. At -- so then as I look at this,</p> <p>11 Mr. Leyman, there's a couple of different exchanges</p> <p>12 between you and Mr. Lockwood, but I don't see anything</p> <p>13 else really until 12:09:39, where you say, "All done but</p> <p>14 call me."</p> <p>15 A. Yes.</p> <p>16 Q. And there's nothing between you and Mr. Wilson</p> <p>17 after 10:00 o'clock before 12:49. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Were you talking to Mr. Wilson by</p> <p>20 telephone?</p> <p>21 A. Yes.</p> <p>22 Q. Were you talking to Mr. Lockwood by phone as</p> <p>23 well?</p> <p>24 A. Yes.</p> <p>25 Q. Does MOAB record phone conversations?</p>	<p style="text-align: right;">276</p> <p>1 Q. All right. Mr. Leyman, I've handed you what's</p> <p>2 been marked as Exhibit 7. Could you tell us what that</p> <p>3 is, please, sir?</p> <p>4 A. That's the confirmation I sent out to both</p> <p>5 parties concerning this transaction.</p> <p>6 Q. Okay. This looks to me like it's the -- it's</p> <p>7 your internal worksheet.</p> <p>8 A. Yes, it is.</p> <p>9 Q. All right. This document, Exhibit 7, wasn't</p> <p>10 actually sent to the parties. Correct?</p> <p>11 A. That's correct. It's a draft that I sent to</p> <p>12 someone who's responsible for sending out the</p> <p>13 confirmations.</p> <p>14 Q. Okay. So -- and I -- that was -- you</p> <p>15 anticipated one of the questions I had for you. You</p> <p>16 were asked earlier if you actually prepared the</p> <p>17 typewritten confirmations that were sent to the parties.</p> <p>18 And is it your practice to prepare this</p> <p>19 handwritten sheet and then give it to someone else who</p> <p>20 would actually input the information --</p> <p>21 A. Yes.</p> <p>22 Q. -- to be sent?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Do you know when Exhibit 7 was</p> <p>25 prepared?</p>
<p style="text-align: right;">275</p> <p>1 A. They do, but the system apparently doesn't</p> <p>2 allow -- or doesn't work. I know John told me there was</p> <p>3 a request --</p> <p>4 Q. Okay. Don't --</p> <p>5 A. -- and there was a possible --</p> <p>6 Q. Don't tell me what counsel said. I guess the</p> <p>7 question is, have you looked for or has somebody at MOAB</p> <p>8 looked to determine --</p> <p>9 A. Yes.</p> <p>10 Q. -- whether there are any phone recordings?</p> <p>11 A. My understanding, they did.</p> <p>12 Q. All right. And you haven't been able to find</p> <p>13 any?</p> <p>14 A. That's correct.</p> <p>15 MR. CANNAVINO: On the record. We were</p> <p>16 requested to check for phone records. We had the IT</p> <p>17 people do that, And anything that may have existed was</p> <p>18 overridden so there was nothing. But we did check that</p> <p>19 as part of our response to the subpoena.</p> <p>20 Q. (BY MR. LEE) So the -- just to be clear then,</p> <p>21 the deal that you negotiated was done over the phone?</p> <p>22 A. Yes.</p> <p>23 Q. In separate conversations with Mr. Wilson on</p> <p>24 one hand and Mr. Lockwood on the other?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">277</p> <p>1 A. Sometime in the afternoon of the 22nd.</p> <p>2 Q. Where did you get the price of 1110 a metric</p> <p>3 ton?</p> <p>4 A. Well, 1110 is incorrect. What was agreed to</p> <p>5 after the negotiation was 1310. That is a typo.</p> <p>6 Q. And I'm just curious if you recall where</p> <p>7 that -- where you came up with that number.</p> <p>8 A. It was something that just was a mistake that</p> <p>9 was put down on the paper. No idea where it came from.</p> <p>10 Q. All right. It's your understanding that all</p> <p>11 of the terms that are listed on Exhibit 4 on your</p> <p>12 confirmation were agreed terms?</p> <p>13 A. Yes.</p> <p>14 Q. There's no arbitration provision in that</p> <p>15 clause -- in that confirmation. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. Did you ever discuss with Mr. Wilson</p> <p>18 arbitration?</p> <p>19 A. No.</p> <p>20 Q. Did you discuss with Mr. Lockwood arbitration?</p> <p>21 A. No.</p> <p>22 Q. Well, what did Mr. Wilson tell you on July</p> <p>23 the 31st when he said he had a problem with the deal?</p> <p>24 A. He said that he needed a guarantee of U.S.</p> <p>25 origin on the xylenes.</p>

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<p style="text-align: right;">278</p> <p>1 Q. Now, when you -- when you broker a deal, 2 Mr. Leyman, do the offer and the bid -- in order for 3 them to have a deal between the parties, the offer and 4 the bid need to match. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if -- I'm going to ask you to make 7 an assumption with me for a minute, Mr. Leyman. If 8 Mr. Wilson -- if the evidence shows that Mr. Wilson 9 believed he was purchasing a guaranteed MX U.S. origin 10 but Tricon wasn't willing to sell that, you don't have a 11 deal, do you?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Because you've got to match a bid with 14 an offer on those terms. Correct?</p> <p>15 A. Well, the terms must stay the same.</p> <p>16 Q. Okay. Let me ask you to turn to the second 17 page of this -- of Exhibit 8. At the very -- near the 18 top, Mr. Leyman, there's a reference at 2:55:25 p.m. 19 from you.</p> <p>20 It says, "Again, is it possible for you to 21 substitute a U.S. origin cargo in order to avoid a legal 22 hassle?" Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall asking Mr. Lockwood that 25 question?</p>	<p style="text-align: right;">280</p> <p>1 Q. That was Mr. Lockwood's position. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you'll go to the next page of 4 Exhibit 8.</p> <p>5 A. Okay.</p> <p>6 Q. At about 5:51:31 p.m., there's a message from 7 Mr. Lockwood. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. No. He was. Right? I mean, he asked you, 10 "How did we go from that quality, being the D843, to 11 5211"?</p> <p>12 A. The only thing I ever discussed -- there was a 13 buying interest by Vinmar, but it was only for 5211 14 spec.</p> <p>15 Q. Right. And that's what you told him. I 16 guess -- I'm just asking you -- I mean, certainly he 17 asked the question, correct, how did we go from that 18 quality, being a reference to the D43, to 5211? 19 Correct?</p> <p>20 A. Yeah.</p> <p>21 Q. And you told him the negotiations were for 22 only 5211/20 bromine?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And Mr. Lockwood even asked you a 25 couple of lines down, "Basically he bid on 5211 only</p>
<p style="text-align: right;">279</p> <p>1 A. Yes.</p> <p>2 Q. All right. And did he ever explain to you why 3 it was not possible for Tricon to substitute a U.S. 4 origin cargo?</p> <p>5 A. I don't know if it was specifically at this 6 time, but in the period between July 31st and August 6th 7 Mr. Lockwood proposed or came up with the ideas of 8 several things to try to keep the deal in place.</p> <p>9 One was a different quality xylene. One 10 was a U.S. origin cargo with a guarantee of arriving by 11 September 30th. Even though it had an ETA prior to the 12 15th, it was not a guaranteed delivery by the 15th. And 13 I guess this was another possibility that he was 14 throwing out to satisfy Vinmar's request for the cargo.</p> <p>15 Q. Okay. But did -- I guess my question, did he 16 ever -- did Mr. Lockwood ever explain to you why he 17 would not provide U.S. origin MX --</p> <p>18 A. Oh, no. I'm sorry.</p> <p>19 Q. -- for a guaranteed first half of September 20 delivery?</p> <p>21 A. No --</p> <p>22 Q. Okay.</p> <p>23 A. -- other than the fact that it was not 24 negotiated and that was not part of the original 25 agreement.</p>	<p style="text-align: right;">281</p> <p>1 basis, I guess," with a question mark?</p> <p>2 And you answered, "Yes. Never bid or 3 showed any interest for 843 spec"?</p> <p>4 A. That's correct.</p> <p>5 Q. Let me -- let me approach it this way. When 6 this issue arose between Vinmar and Tricon, is it your 7 recollection, Mr. Leyman, that Tri -- that Vinmar was 8 willing to proceed with the deal at the price, 1310 a 9 metric ton, so long as Tricon guaranteed U.S. origin MX 10 for first half delivery in September?</p> <p>11 A. Vinmar sent an e-mail proposing that they go 12 forward with the deal on the original negotiated terms 13 and conditions. In the e-mail, there was also -- which 14 I didn't understand -- the phraseology "contract 15 form," acceptable contract form, whatever that meant, 16 but that is what they proposed on August 6th.</p> <p>17 Q. Okay. I mean, I -- and so my question, 18 Mr. Leyman, was it your understanding in the days 19 following July 31st that Vinmar was still willing to 20 purchase MX at the 1310 a metric ton price if this U.S. 21 origin issue had been resolved?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Before we leave Exhibit 8, I just want 24 to ask you about -- on the last page. You had mentioned 25 you weren't clear as to the price, and I just wanted to</p>

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<p style="text-align: right;">282</p> <p>1 ask you -- at the very top, you make the statement on</p> <p>2 August the 6th, 2008, "The fact that Vinmar is still</p> <p>3 willing to pay 1310 in a market that is much lower</p> <p>4 suggests that they are just not walking or running away</p> <p>5 from the deal." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does that refresh your recollection that as of</p> <p>8 August the 6th, 2008, the price of MX was less than the</p> <p>9 price that was originally negotiated?</p> <p>10 A. Yes.</p> <p>11 Q. If somebody refers in an -- in an instant</p> <p>12 message exchange to "USG," does that have a meaning to</p> <p>13 you?</p> <p>14 A. It means U.S. Gulf.</p> <p>15 Q. Have you talked to Brad Lockwood about this</p> <p>16 case?</p> <p>17 A. No, not recently.</p> <p>18 Q. Okay. When is the last time you talked to him</p> <p>19 about this dispute between Tricon and Vinmar?</p> <p>20 A. I don't have a specific date. But somewhere</p> <p>21 since August 8th or maybe August 15th, he told me in</p> <p>22 part of other conversations that the dispute was going</p> <p>23 to arbitration and that was the extent of the</p> <p>24 conversation.</p> <p>25 Q. Have you talked to anybody at Tricon other</p>	<p style="text-align: right;">284</p> <p>1 the origin of the xylenes, and this was after I recapped</p> <p>2 and summarized all the terms and conditions.</p> <p>3 I subsequently called Brad, also recapped</p> <p>4 the terms and conditions, and asked him that question.</p> <p>5 And his response, "The origin was most likely U.S.</p> <p>6 origin."</p> <p>7 I in turn called back Rick, passed that</p> <p>8 information on to him, and then we got into a discussion</p> <p>9 of when to declare the discharge port.</p> <p>10 Q. Let me ask you so we're -- I'm sorry. Back to</p> <p>11 Exhibit 1, Mr. Leyman, if you could go to MOAB 12. And</p> <p>12 this is July 31, 2008, at the top. You see that?</p> <p>13 A. Yes.</p> <p>14 Q. And this is an exchange -- at the very top an</p> <p>15 exchange between you and Mr. Lockwood where it looks to</p> <p>16 me like Mr. Lockwood is now in the market to buy MX. Is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, one of the things he asked you</p> <p>20 is, "Could you go back to Vinmar and see if I could buy</p> <p>21 some MX from them"?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Did Mr. Lockwood tell you why he</p> <p>24 was interested in buying MX on July 31, 2008?</p> <p>25 A. No.</p>
<p style="text-align: right;">283</p> <p>1 than Mr. Lockwood about this dispute?</p> <p>2 A. No.</p> <p>3 Q. Exhibit 1 is the instant message exchanges</p> <p>4 between you and Mr. Lockwood over the course of several</p> <p>5 days. We've obviously looked at it already a few times</p> <p>6 today, but I wanted to ask a couple of questions just</p> <p>7 for my own understanding.</p> <p>8 At Page 3, which is MOAB 6, midway down at</p> <p>9 12:21:51, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. You write to Mr. Lockwood, "He is concerned if</p> <p>12 MX on water and near Panama" -- it should be canal.</p> <p>13 "We will not have enough time to declare discharge</p> <p>14 port. He has more than potential customer." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. Are you referring to Mr. Wilson and Vinmar in</p> <p>18 that instant message exchange?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And what was the concern? That it</p> <p>21 would be hard to get it through the Panama Canal in</p> <p>22 time?</p> <p>23 A. No. That was part of the discussion in</p> <p>24 declaring the date of the discharge port. After we</p> <p>25 concluded the transaction, Mr. Wilson asked me what --</p>	<p style="text-align: right;">285</p> <p>1 EXAMINATION</p> <p>2 BY MR. DIAZ-ARRASTIA:</p> <p>3 Q. Mr. Leyman, I have just a few questions. You</p> <p>4 had talked to Mr. Lee about Exhibits 2, 3 and 4 for a</p> <p>5 little while and there were some terms from those</p> <p>6 documents that I think you referred to as boilerplate.</p> <p>7 Do you recall that --</p> <p>8 A. Yes.</p> <p>9 Q. -- back and forth?</p> <p>10 A. Yes.</p> <p>11 Q. I think you had told me that you had brokered</p> <p>12 a deal with Mr. Wilson and Mr. Lockwood before</p> <p>13 July 22nd, 2008?</p> <p>14 A. Yes.</p> <p>15 Q. Had you -- in those deals, had you sent</p> <p>16 confirming memos like the ones --</p> <p>17 A. I did.</p> <p>18 Q. -- that are Exhibit 2, 3 and 4?</p> <p>19 A. I did.</p> <p>20 Q. Did those also contain the same boilerplate?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Lockwood and Mr. Wilson knew your</p> <p>23 boilerplate?</p> <p>24 A. I assume so.</p> <p>25 Q. They had seen it before --</p>

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<p style="text-align: right;">286</p> <p>1 A. Yes.</p> <p>2 Q. -- from prior transactions?</p> <p>3 A. Yes.</p> <p>4 Q. During the back and forth of the negotiations</p> <p>5 on the July 22nd deal, was it important to Vinmar and</p> <p>6 Mr. Wilson that delivery be in Asia between</p> <p>7 September 1st and September 15th?</p> <p>8 A. Yes.</p> <p>9 Q. Did Mr. Wilson tell you that that was an</p> <p>10 important part of the deal for him?</p> <p>11 A. Yes. And he bid accordingly.</p> <p>12 Q. I think your testimony was in the course of</p> <p>13 discussions the FOB H/TC became no longer a major</p> <p>14 concern for Mr. Wilson. Is that right?</p> <p>15 A. He had no interest in buying on that basis.</p> <p>16 Q. All right. You testified that there was some</p> <p>17 discussion between you and Mr. Lockwood that the MX</p> <p>18 Tricon would sell was likely U.S. Gulf origin. Do you</p> <p>19 remember that?</p> <p>20 A. Yes.</p> <p>21 Q. And you conveyed that to Mr. Wilson?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Did Mr. Wilson ever say that it was necessary</p> <p>24 to guarantee U.S. origin?</p> <p>25 A. No, he did not.</p>	<p style="text-align: right;">288</p> <p>1 affirmed?</p> <p>2 MR. DIAZ-ARRASTIA: He did it in his</p> <p>3 deposition.</p> <p>4 JUDGE BENTON: Mr. Rajevac, if you'll</p> <p>5 raise your right hand, please, sir.</p> <p>6 (At this time the witness was duly sworn</p> <p>7 by Judge Benton.)</p> <p>8 JUDGE BENTON: All right. You may be</p> <p>9 seated.</p> <p>10 Mr. Lee, you may proceed.</p> <p>11 JUDGE DAVIDSON: Mr. Diaz-Arrastia?</p> <p>12 JUDGE BENTON: I'm sorry. That is the</p> <p>13 third time and it won't happen again.</p> <p>14 MR. DIAZ-ARRASTIA: Okay.</p> <p>15 VUK RAJEVEC,</p> <p>16 having been first duly sworn, testified as follows:</p> <p>17 DIRECT EXAMINATION (4:26 p.m.)</p> <p>18 BY MR. DIAZ-ARRASTIA:</p> <p>19 Q. Mr. Rajevac, good afternoon. Could you state</p> <p>20 your full name for the record, please?</p> <p>21 A. First name, Vuk, V-U-K, last name, Rajevac,</p> <p>22 R-A-J-E-V-A-C.</p> <p>23 Q. Okay. Can you tell us a little bit about your</p> <p>24 background and education, sir?</p> <p>25 A. I hold a bachelor's degree, double major from</p>
<p style="text-align: right;">287</p> <p>1 Q. On August the 6th and thereafter when there</p> <p>2 were discussions between Tricon and Vinmar that you were</p> <p>3 copied on or listened in on and -- at that time did</p> <p>4 Mr. Lockwood ever tell you that he could not guarantee</p> <p>5 U.S. origin and also guarantee delivery in Asia between</p> <p>6 September 1st and September 15th?</p> <p>7 A. I don't recall him saying that. Only that</p> <p>8 that was not what the original agreement was.</p> <p>9 (This is the end of the playback of the</p> <p>10 edited version of the videotaped deposition of Richard</p> <p>11 Leyman that was originally taken on April 29, 2010.)</p> <p>12 (The time is 4:26 p.m.)</p> <p>13 JUDGE BENTON: Would that be the complete</p> <p>14 offer of both parties?</p> <p>15 MR. DIAZ-ARRASTIA: Yes.</p> <p>16 JUDGE BENTON: Call your next witness.</p> <p>17 MR. DIAZ-ARRASTIA: The next witness</p> <p>18 is Vuk Rajevac. He's waiting outside.</p> <p>19 JUDGE BENTON: Vuk Rajevac. Do you know</p> <p>20 if the traditional oath is going to be appropriate?</p> <p>21 MR. DIAZ-ARRASTIA: Excuse me?</p> <p>22 JUDGE BENTON: The traditional oath, will</p> <p>23 it be appropriate?</p> <p>24 JUDGE DAVIDSON: Does he need to be sworn,</p> <p>25 affirmed or does he have a problem with being sworn or</p>	<p style="text-align: right;">289</p> <p>1 Rice University, one in economics and one in psychology.</p> <p>2 Q. Okay. And you have an unusual name. Can you</p> <p>3 tell us a little bit about your name?</p> <p>4 A. I come from Serbia. I moved here in 1999.</p> <p>5 Played tennis for Rice on a scholarship and then got a</p> <p>6 job at Tricon right after I graduated in 2004.</p> <p>7 Q. Okay. And you are still employed by Tricon?</p> <p>8 A. That is correct.</p> <p>9 Q. What is your position at Tricon today?</p> <p>10 A. I am currently a trader.</p> <p>11 Q. Okay. And back in July 2008, what was your</p> <p>12 position?</p> <p>13 A. I was an operations specialist.</p> <p>14 Q. And did you work on the Vinmar transaction?</p> <p>15 A. I did.</p> <p>16 Q. Excuse me?</p> <p>17 A. I did.</p> <p>18 Q. Okay. Tell me what an operations specialist</p> <p>19 does.</p> <p>20 A. After the trader does the deal, the</p> <p>21 transaction moves over to us, gets to free up the trader</p> <p>22 to do more trades and worry about other stuff. So we</p> <p>23 become the face of the company and deal with the</p> <p>24 counterparties on both sides, purchase and sales side,</p> <p>25 to bring the transaction to an end basically.</p>

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<p style="text-align: right;">290</p> <p>1 Q. And does the operations specialist negotiate</p> <p>2 contract terms?</p> <p>3 A. We're allowed to, yes, negotiate the general</p> <p>4 terms and conditions, correct.</p> <p>5 Q. Are some of these contract terms that the ops</p> <p>6 specialists negotiate, are they important to whether</p> <p>7 Tricon can make or lose money on a deal?</p> <p>8 A. Oh, very much, yes, sir.</p> <p>9 Q. Tell me, sir, when you first became involved</p> <p>10 in the Vinmar transaction.</p> <p>11 A. When I found out that Brad had done a deal</p> <p>12 with Vinmar, sold, and that's -- I don't recall exactly</p> <p>13 the date and time but --</p> <p>14 Q. You have some notebooks on the table in front</p> <p>15 of you. There's a Joint Exhibit notebook, a Tricon</p> <p>16 Exhibit notebook and a Vinmar Exhibit notebook.</p> <p>17 A. Right.</p> <p>18 Q. Let me ask you to take out the Joint Exhibit</p> <p>19 notebook --</p> <p>20 A. Got it.</p> <p>21 Q. -- and turn to Exhibit J 5. And let's look at</p> <p>22 the second page of Exhibit J 5.</p> <p>23 A. Okay.</p> <p>24 Q. Is that Tricon's sales slip?</p> <p>25 A. Yes, that is.</p>	<p style="text-align: right;">292</p> <p>1 essential terms of the deal in Joint Exhibit 5, which</p> <p>2 was a Tricon letter, and Joint Exhibit 4, the last</p> <p>3 MOAB -- 4, the last MOAB confirm, are the essential</p> <p>4 terms the same in both?</p> <p>5 A. Yes. As far as I can tell, they are.</p> <p>6 Q. Is it your job as the operations specialist at</p> <p>7 Tricon to negotiate the terms and conditions of sale?</p> <p>8 A. Yes. That's part of -- part of my job, the</p> <p>9 general terms and conditions of the sale, yes.</p> <p>10 Q. Take a look at the last page of exhibit --</p> <p>11 Joint Exhibit No. 5. Do you see where there are</p> <p>12 signature lines on that page?</p> <p>13 A. I do.</p> <p>14 Q. Have you ever seen these lines signed on a</p> <p>15 spot deal?</p> <p>16 A. No. I can't recall ever seeing them signed on</p> <p>17 a spot deal, no. On a term deal -- on a longer term</p> <p>18 deal I have in the past but not on a spot deal.</p> <p>19 Q. Okay. Let me ask you also, Mr. Rajevac, when</p> <p>20 Vinmar sends its terms and conditions to its</p> <p>21 counterparty, is it its intention to cancel the deal</p> <p>22 that was made with the broker?</p> <p>23 MR. LEE: I think the question was did</p> <p>24 Vinmar. I think --</p> <p>25 MR. DIAZ-ARRASTIA: I'll ask the</p>
<p style="text-align: right;">291</p> <p>1 Q. Did you receive a copy of Exhibit J 5 from</p> <p>2 Mr. Lockwood?</p> <p>3 A. Yes, I did.</p> <p>4 Q. And if you will look at the second page of</p> <p>5 that sales letter, are those Tricon's standard terms and</p> <p>6 conditions of sale?</p> <p>7 A. Yes.</p> <p>8 Q. Let me tell you to take a look also at J 4.</p> <p>9 A. Joint 4?</p> <p>10 Q. Oh, I'm sorry. Second page. And that is a</p> <p>11 copy of the last MOAB confirm for this transaction.</p> <p>12 Mr. Rajevac, did you also receive a copy of Joint</p> <p>13 Exhibit No. 4?</p> <p>14 A. I don't specifically remember receiving it,</p> <p>15 but I'm pretty certain I would have because it's part of</p> <p>16 the file and it usually goes behind our letter in the --</p> <p>17 in the file folder.</p> <p>18 Q. Okay. And I will ask you if you can turn</p> <p>19 again to the first page of the letter, TRI 7. And if</p> <p>20 you would compare that --</p> <p>21 A. Oh, that's on --</p> <p>22 Q. Exhibit 5.</p> <p>23 A. Okay.</p> <p>24 Q. Compare that to the second page of Joint</p> <p>25 Exhibit 4, which is VIN 18. And tell me, sir, if the</p>	<p style="text-align: right;">293</p> <p>1 question --</p> <p>2 MR. LEE: I object, but I think you messed</p> <p>3 up.</p> <p>4 MR. DIAZ-ARRASTIA: Excuse me. I</p> <p>5 apologize.</p> <p>6 JUDGE BENTON: It's like calling him</p> <p>7 Mr. Lee.</p> <p>8 MR. DIAZ-ARRASTIA: Like calling me</p> <p>9 Mr. Lee. I apologize. Let me rephrase.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Rajevac, when</p> <p>11 Tricon sends its terms and conditions of sale to its</p> <p>12 counterparty, is it its intention to cancel the deal</p> <p>13 that had been made with the broker?</p> <p>14 A. No.</p> <p>15 Q. What is the intention?</p> <p>16 A. The intention is to expand on the terms that</p> <p>17 are -- that have been agreed already between the trader</p> <p>18 and propose the new terms and conditions.</p> <p>19 Q. To propose additional terms?</p> <p>20 A. Right.</p> <p>21 Q. And does it sometimes happen that some of the</p> <p>22 additional terms are not agreed to?</p> <p>23 A. It happens, yes.</p> <p>24 Q. Does it sometimes happen that none of the</p> <p>25 original -- none of additional terms are agreed to?</p>

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<p style="text-align: right;">294</p> <p>1 A. Very rarely. I can't recall where none of 2 them had been agreed to. 3 Q. But in any event, does that mean that there's 4 no deal? 5 A. No. The deal is still in place. 6 Q. Let's turn now to Joint Exhibit No. 13. I 7 will call your attention to the bottom half. It's an 8 e-mail from Laurentiu Pascu to you on July 29th, 2008. 9 Do you see that, sir? 10 A. I do. 11 Q. Do you know who Laurentiu Pascu is? 12 A. Yes. He is my counterparty at Vinmar. 13 Q. So he would have been ops specialist at 14 Vinmar? 15 A. Correct. 16 Q. And if we can focus in on that, what is 17 Mr. Pascu telling you in his cover e-mail? 18 A. "Find enclosed our comments on your sale 19 confirmation. We shall revert soon with our -- we 20 should soon -- revert soon with our purchase order for 21 your review. Please advise. Advising bank where the 22 LC" -- 23 Q. Okay. 24 A. -- "should be open." Do you want me to read 25 the whole thing?</p>	<p style="text-align: right;">296</p> <p>1 Mr. Pascu? 2 A. Yes. 3 Q. Now, although he has changed that, 4 Mr. Rajevac, in your mind does ship period and arrival 5 at destination really mean the same thing? 6 A. Yes, in this case it does. It's just -- it's 7 just language of our system calls it ship period. 8 Q. Okay. Let's go down to where it says credit 9 terms. Do you see that, sir? 10 A. Yes. 11 Q. And that's referring to the on -- at site 12 letter of credit that was supposed to be prepared? 13 A. Correct. 14 Q. And do you see where Mr. Rajevac -- Mr. Pascu 15 scratched out the words "and confirmed"? 16 A. I do see that. 17 Q. Okay. Is -- whether the letter of credit 18 needs to be confirmed, is that a logistics issue? 19 A. That's a credit issue. 20 Q. And do operations specialists negotiate credit 21 issues? 22 A. Yes, amongst others. 23 Q. Okay. Let's turn to the next page. And let's 24 go down to Paragraph No. 7 first and I'll jump around 25 here a little bit.</p>
<p style="text-align: right;">295</p> <p>1 Q. No. I think that's enough. Now, let me ask 2 you something. As an operations specialist, do you 3 prepare a purchase order if you think your deal has just 4 been canceled? 5 A. No. 6 Q. Turn to the next page on Joint Exhibit 13. 7 Actually another couple of pages. Did you receive this 8 document attached to the e-mail that you just looked at? 9 A. Yes, I did. 10 Q. And it contains some changes on the letter 11 that was sent -- 12 A. Correct. 13 Q. -- by Mr. Lockwood. Correct? 14 A. Correct. 15 Q. Let's go over a couple of the changes. 16 A. Okay. 17 Q. Where it says "Ship Period," do you see that 18 ship has been scratched out and words have been written 19 in? 20 A. Right. 21 Q. Where it says, "Arrival at destination"? 22 A. Correct. 23 Q. Do you see that, sir? 24 A. Yes, I do. 25 Q. That was something that you received from</p>	<p style="text-align: right;">297</p> <p>1 A. No. ?? 2 Q. No. 7. 3 A. Okay. 4 Q. And first Transfer of Title and Risk. Do you 5 see that, sir? 6 A. I do. 7 Q. And Mr. Pascu has made a few changes. He has 8 scratched out a few words in the second line and added 9 "As per Incoterm 2000." 10 A. Yes. 11 Q. And under the A section under that, there's 12 also places where he has scratched out some language? 13 A. Yes. 14 Q. Do you see that, sir? 15 A. Yes, I do. 16 Q. Again, let me ask you, is transfer of title 17 and risk a logistics issue? 18 A. No, I wouldn't call it a logistics issue, no. 19 Q. Okay. Let's also look at some of the other 20 marks that Mr. Pascu has made. He -- first, No. 3, law 21 and jurisdiction. Do you see where there's a checkmark 22 there? 23 A. Yes, I do. 24 Q. Is law and jurisdiction a logistics issue? 25 A. No.</p>

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<p style="text-align: right;">298</p> <p>1 Q. It involves the law. Correct?</p> <p>2 A. Correct.</p> <p>3 Q. Is that the sort of provision that an ops</p> <p>4 specialist would negotiate?</p> <p>5 A. Absolutely.</p> <p>6 Q. Let's take a look at additional collateral,</p> <p>7 No. 4?</p> <p>8 A. Uh-huh.</p> <p>9 Q. There's also a checkmark there?</p> <p>10 A. Right.</p> <p>11 Q. Is additional collateral a logistics issue?</p> <p>12 A. No. That's another credit/finance issue.</p> <p>13 Q. Okay. And he does mention up in No. 2</p> <p>14 demurrage. He wants to change it from 90 days to</p> <p>15 60 days. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Let's also come to the next page and</p> <p>18 look at Paragraph No. 9.</p> <p>19 A. Okay.</p> <p>20 Q. That's the dispute resolution provision.</p> <p>21 Correct, sir?</p> <p>22 A. Yes.</p> <p>23 Q. And that's what provides for arbitration and</p> <p>24 that why we're here today?</p> <p>25 A. Right.</p>	<p style="text-align: right;">300</p> <p>1 number is found?</p> <p>2 A. 4529980?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Yeah.</p> <p>5 Q. If you would now flip back to Joint Exhibit</p> <p>6 No. 13, the second page -- third page actually. Now, is</p> <p>7 that the same number that you see handwritten on top of</p> <p>8 Joint Exhibit 13?</p> <p>9 A. Yes, sir.</p> <p>10 JUDGE BENTON: Hold on a second. What</p> <p>11 exhibit number is that right there?</p> <p>12 MR. DIAZ-ARRASTIA: That is joint -- that</p> <p>13 would be Tricon Exhibit No. 10.</p> <p>14 JUDGE BENTON: Okay. All right.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) If we could go down on</p> <p>16 Tricon Exhibit No. 10 to where it says law and</p> <p>17 arbitration. Tell me when you find it. There you go.</p> <p>18 And that is something that you have seen</p> <p>19 since this matter started being arbitrated, correct --</p> <p>20 A. Yes, since.</p> <p>21 Q. -- with Mr. Rajevac?</p> <p>22 A. This is correct.</p> <p>23 Q. It provides for arbitration before the</p> <p>24 Triple A pretty much like we're doing right now?</p> <p>25 A. That's what it says here.</p>
<p style="text-align: right;">299</p> <p>1 Q. Is dispute resolution one of the terms that an</p> <p>2 operations specialist would negotiate?</p> <p>3 A. Yeah, it is.</p> <p>4 Q. Now, Mr. Pascu, have you subsequently learned</p> <p>5 that the terms and conditions of Vinmar's standard</p> <p>6 purchase order also contain essentially the same</p> <p>7 arbitration clause?</p> <p>8 A. I have learned since, yes.</p> <p>9 Q. I am sorry. I keep calling you Pascu. I</p> <p>10 guess it's because Rajevac -- Pascu is easier to say</p> <p>11 than Rajevac.</p> <p>12 A. Right.</p> <p>13 Q. I apologize for that. But you have</p> <p>14 subsequently learned that, have you not, sir?</p> <p>15 A. Yes, I have. I have subsequently learned</p> <p>16 that.</p> <p>17 Q. Take a look at Tricon Exhibit folder, No. 10.</p> <p>18 A. No. 10?</p> <p>19 Q. No. 10. Do you see that, sir?</p> <p>20 A. I do.</p> <p>21 Q. And I will represent to you that that is the</p> <p>22 Vinmar purchase order for this transaction.</p> <p>23 A. Okay.</p> <p>24 Q. Will you take a look at -- on the upper</p> <p>25 right-hand corner, you see where the purchase order</p>	<p style="text-align: right;">301</p> <p>1 Q. Okay. And let me also just scroll up a little</p> <p>2 bit. There's a place in this purchase order for origin.</p> <p>3 Correct, sir?</p> <p>4 A. Yes, I do see that.</p> <p>5 Q. And it is left blank?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Let's take a look now at Joint Exhibit</p> <p>8 No. 14. And look at the lower half of this first page.</p> <p>9 Tell us which one Exhibit No. 14 is.</p> <p>10 A. It is my answer to Mr. Pascu's e-mail that we</p> <p>11 just looked at in one of the other exhibits where he was</p> <p>12 requesting some changes.</p> <p>13 Q. Okay. This is your response to Joint</p> <p>14 Exhibit 13. Correct?</p> <p>15 A. Yes, that's correct, 13.</p> <p>16 Q. And you sent it on July 29, 2008, at</p> <p>17 4:43 p.m.?</p> <p>18 A. Yep. That's what it says here.</p> <p>19 Q. And your statement on No. 1 is "Your comments</p> <p>20 on the contract are well noted and accepted except for</p> <p>21 demurrage time bar, which is 90 days as per industrywide</p> <p>22 standard." Is that correct, sir?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. Was it your intention to tell Mr. Pascu that</p> <p>25 you were in agreement with all of his proposed changes</p>

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<p style="text-align: right;">302</p> <p>1 except for demurrage time bar?</p> <p>2 A. Yes. That was my full intention.</p> <p>3 Q. And that's, in fact, what you said?</p> <p>4 A. Yes, exactly.</p> <p>5 Q. Okay. Now, later on down in No. 3, this is</p> <p>6 where you state -- specifically state to Mr. Pascu that</p> <p>7 Asian origin cargo might be used to supply this</p> <p>8 contract?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. Okay. And what it says is, "As far as the</p> <p>11 ship details, we sold on a CFR basis with arrival</p> <p>12 window. So once you declare the discharge port by</p> <p>13 August 8th, we will be able to decide whether to give</p> <p>14 you a deep sea cargo, which at that point will most</p> <p>15 likely be on the water, or an Asian origin cargo."</p> <p>16 And then at the very end, you say, "Since</p> <p>17 we guarantee the arrival window, we always have to keep</p> <p>18 a few options open in order to perform."</p> <p>19 A. That is correct.</p> <p>20 Q. Now, when you say "deep sea cargo," sir, what</p> <p>21 does that mean?</p> <p>22 A. It just means the cargo. In this case it's --</p> <p>23 Asia is the final destination. It means it's not coming</p> <p>24 from Asia. It will be coming from the U.S. or Europe</p> <p>25 or --</p>	<p style="text-align: right;">304</p> <p>1 Q. Do any of Mr. Pascu's comments on Joint</p> <p>2 Exhibit 13 say anything about origin of material?</p> <p>3 A. I'm uncertain. Let me look real quick. No.</p> <p>4 Q. When was the first time that you were told</p> <p>5 that Vinmar required U.S. origin material?</p> <p>6 A. I don't remember specifically. It was a</p> <p>7 couple of years ago but it was --</p> <p>8 Q. Well, let's look at the document. Let's look</p> <p>9 at Joint Exhibit No. 15.</p> <p>10 A. Joint --</p> <p>11 Q. If you will look at it in the book, sir.</p> <p>12 A. Joint 15.</p> <p>13 Q. Okay. Here we're looking at an e-mail that</p> <p>14 Mr. Wilson sends you on July 31st, 2008, at 1:43 p.m.</p> <p>15 A. Uh-huh. I see that.</p> <p>16 Q. Okay. And that's where he says, "Vuk, we</p> <p>17 cannot accept open origin for this material"?</p> <p>18 A. Yes.</p> <p>19 Q. Was that the first time you were told that</p> <p>20 Vinmar required U.S. origin?</p> <p>21 A. I'm pretty certain that was the first time,</p> <p>22 yes.</p> <p>23 Q. Okay. And how long after your communication</p> <p>24 with Mr. Pascu on Exhibit 14 did this come to you? Take</p> <p>25 a look at Exhibit 14.</p>
<p style="text-align: right;">303</p> <p>1 Q. When you refer to deep sea cargo, was that</p> <p>2 most likely to be U.S. origin cargo?</p> <p>3 A. Yes.</p> <p>4 Q. And actually what you tell Mr. Pascu is,</p> <p>5 "Unfortunately, with deep sea Asia trade, it is not</p> <p>6 always possible to know which cargo will be delivered</p> <p>7 since the ETA's are hard to keep due to Panama</p> <p>8 crossing," meaning the Panama Canal. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. "Weather in the Pacific, et cetera." And then</p> <p>11 you say, "And since we guarantee the arrival window, we</p> <p>12 always have to keep a few options open in order to</p> <p>13 perform." Correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Was it your understanding when you sent this</p> <p>16 e-mail on July 29th, 2008, at 4:43 p.m. that Tricon and</p> <p>17 Vinmar have now agreed on all the additional terms</p> <p>18 except for demurrage?</p> <p>19 MR. LEE: Objection. Leading.</p> <p>20 JUDGE BENTON: Overruled.</p> <p>21 A. Yes, it was my understanding.</p> <p>22 Q. (BY MR. DIAZ-ARRASTIA) Does the Tricon terms</p> <p>23 and conditions say anything about the origin of the</p> <p>24 material?</p> <p>25 A. No.</p>	<p style="text-align: right;">305</p> <p>1 A. Okay. Exhibit 14, I replied on July 29th.</p> <p>2 Q. At 4:43 p.m.?</p> <p>3 A. Right. And Mr. Wilson replied to me two days</p> <p>4 later on the 31st.</p> <p>5 Q. Okay. As an operations specialist,</p> <p>6 Mr. Rajevac, if you were informed by a counterparty that</p> <p>7 they were not necessarily going to meet something that</p> <p>8 was of critical importance to Tricon in the deal, when</p> <p>9 would you inform your trader?</p> <p>10 A. Can you repeat that?</p> <p>11 Q. As an operations specialist -- operations</p> <p>12 specialists work with the traders. Correct?</p> <p>13 A. Right.</p> <p>14 Q. Traders make the deals, the operations</p> <p>15 specialists complete the transaction. Correct?</p> <p>16 A. Right.</p> <p>17 Q. As an operations specialist, if you had just</p> <p>18 learned from your counterparty that something that your</p> <p>19 employer, Tricon, considered to be -- and this is a</p> <p>20 hypothetical question, something that Tricon considered</p> <p>21 to be a very important thing that they needed in the</p> <p>22 deal and the counterparty just told you that they would</p> <p>23 not necessarily meet that, how much time would it take</p> <p>24 you to report that to your trader?</p> <p>25 A. I would do it immediately.</p>

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<p>1 Q. Take a look now -- well, first of all, did</p> <p>2 Tricon -- did Vinmar, I'm sorry, declare a discharge</p> <p>3 port on August the 8th?</p> <p>4 A. No, it did not.</p> <p>5 Q. Okay. And what happened after that?</p> <p>6 A. I believe I sent an e-mail telling them</p> <p>7 they're in a breach of contract.</p> <p>8 Q. Okay. Take a look at Joint Exhibit 21 towards</p> <p>9 the end of that exhibit. It begins on Page VIN 41 at</p> <p>10 the bottom.</p> <p>11 A. Okay.</p> <p>12 MR. DIAZ-ARRASTIA: Run up a little bit so</p> <p>13 he can see the e-mail. There you go.</p> <p>14 Q. (BY MR. DIAZ-ARRASTIA) And this is an e-mail</p> <p>15 that you --</p> <p>16 MR. DIAZ-ARRASTIA: Oh, you lost it.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) -- you are sending to</p> <p>18 Mr. Wilson on August the 8th at 3:42 p.m.?</p> <p>19 A. Uh-huh. I see that.</p> <p>20 Q. And it says, "Will you remind him that he has</p> <p>21 to declare a discharge port that day?"</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And let's take a look at the following</p> <p>24 page at the very bottom. And you tell Mr. Wilson,</p> <p>25 "Furthermore, if your discharge port declaration is not</p>	<p>1 MR. LEE: I don't think I have a terribly</p> <p>2 long cross-examination but it may be a lot more</p> <p>3 efficient if we do it that way.</p> <p>4 JUDGE BENTON: All right.</p> <p>5 MR. LEE: Besides, my back is killing me.</p> <p>6 JUDGE BENTON: Very good. Just a little</p> <p>7 note. Who you calling next after Mr. Rajevac?</p> <p>8 MR. DIAZ-ARRASTIA: After Mr. Rajevac, we</p> <p>9 will play the deposition of Mr. Pascu.</p> <p>10 JUDGE BENTON: Okay.</p> <p>11 MR. DIAZ-ARRASTIA: We will then play the</p> <p>12 deposition of Mr. Wilson. Then we will call Mr. Steve</p> <p>13 Simpson who is an expert on customs and practices in the</p> <p>14 industry and then we will call Mr. Matthews to go over</p> <p>15 the calculation of the damages.</p> <p>16 JUDGE BENTON: Okay.</p> <p>17 MR. DIAZ-ARRASTIA: And that will be our</p> <p>18 evidence.</p> <p>19 JUDGE BENTON: Let's --</p> <p>20 JUDGE DAVIDSON: Can we leave our stuff</p> <p>21 here overnight or do we need to take it or do we need</p> <p>22 to --</p> <p>23 MR. DIAZ-ARRASTIA: We have the room. I</p> <p>24 intended to leave my binders and things here.</p> <p>25 JUDGE DAVIDSON: Then I'll do the same.</p>
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<p>1 given by 5:00 p.m. CST today, Vinmar will be in breach</p> <p>2 of the contract and we reserve the right to resell the</p> <p>3 cargo in open market and will hold Vinmar liable for all</p> <p>4 damages, including but not limited to the difference</p> <p>5 between the price at which we sold to Vinmar and the</p> <p>6 price obtained for the cargo in the open market."</p> <p>7 A. Right.</p> <p>8 Q. And did Mr. Lockwood ask you to send this</p> <p>9 notice?</p> <p>10 A. I don't specifically remember if he did or</p> <p>11 not, but I would assume we discussed it.</p> <p>12 JUDGE BENTON: I would assume -- I'm</p> <p>13 sorry. I would assume what?</p> <p>14 THE WITNESS: That we discussed --</p> <p>15 JUDGE BENTON: Okay.</p> <p>16 THE WITNESS: -- the fact that it was the</p> <p>17 8th, almost 4:00 o'clock, and we haven't heard from</p> <p>18 Vinmar.</p> <p>19 MR. DIAZ-ARRASTIA: I pass the witness.</p> <p>20 JUDGE BENTON: You want to go for about</p> <p>21 five, ten minutes or do you want to just pick up in the</p> <p>22 morning? What's your pleasure?</p> <p>23 MR. LEE: It may be easier to pick up in</p> <p>24 the morning. I can get my notes.</p> <p>25 JUDGE BENTON: Okay.</p>	<p>1 JUDGE BENTON: Very good. We'll be in</p> <p>2 recess until tomorrow morning.</p> <p>3 We're off the record.</p> <p>4 (Proceedings recessed at 4:50 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 STATE OF TEXAS)
2 COUNTY OF HARRIS)
3

4 I, Diana Ramos, a Certified Shorthand Reporter
5 in and for the State of Texas, do hereby certify that
6 the above and foregoing pages contain a full, true and
7 correct transcription of my shorthand notes taken upon
8 the occasion set forth in the caption hereof, as reduced
9 to writing by me and under my supervision.

10 I further certify that the transcription of my
11 notes truly and correctly reflects the exhibits offered
12 into evidence, if any; that I am neither counsel for nor
13 related to any party in this cause and am not
14 financially interested in the outcome.

15 Certified to by me on this 28th day of
16 September, 2010.
17
18

19 Diana Ramos CSR
20 Texas CSR No. 3133
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25

AMERICAN ARBITRATION ASSOCIATION

DALLAS, TEXAS

TRICON ENERGY, LTD.,)	
)	
Claimant,)	
)	CASE NO.
- against -)	70 198Y 00168 09
)	
VINMAR INTERNATIONAL, LTD.,)	
)	
Respondent.)	

TRANSCRIPT OF PROCEEDINGS

BE IT KNOWN THAT the above-entitled matter came on for arbitration at 8:47 a.m. on the 21st day of September, 2010, at the Houston Club, 811 Rusk, 10th Floor, Travis Room, Houston, Texas, before the Honorable Levi Benton, Presiding, the Honorable Sharolyn Wood and the Honorable Mark Davidson, Arbitrators, and the following proceedings were had:

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<p style="text-align: right;">312</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 THE PANEL OF ARBITRATORS:</p> <p>4 Honorable Levi Benton, Chair</p> <p>5 Honorable Sharolyn Wood</p> <p>6 Honorable Mark Davidson</p> <p>7</p> <p>8 FOR THE CLAIMANT, TRICON ENERGY, LTD.:</p> <p>9 Mr. George R. Diaz-Arrastia</p> <p>10 Ms. Tracy D. Larson</p> <p>11 SCHIRRMMEISTER, DIAZ-ARRASTIA & BREM, LLP</p> <p>12 700 Milam, 10th Floor</p> <p>13 Houston, Texas 77002</p> <p>14 Tel: (713) 221-2500</p> <p>15 FAX: (713) 228-3510</p> <p>16 gdarrastia@sdablaw.com</p> <p>17 tlarson@sdablawl.com</p> <p>18</p> <p>19 FOR THE RESPONDENT, VINMAR INTERNATIONAL, LTD.:</p> <p>20 Mr. Stephen H. Lee</p> <p>21 Mr. R. Blake Runions</p> <p>22 PORTER & HEDGES, LLP</p> <p>23 1000 Main Street, 36th Floor</p> <p>24 Houston, Texas 77002-6336</p> <p>25 Tel: (713) 226-6000</p> <p>FAX: (713) 226-6286</p> <p>slee@porterhedges.com</p> <p>brunions@porterhedges.com</p> <p>ALSO PRESENT:</p> <p>Mr. Mark S. Antonvich</p> <p>Ms. Angie Gossen</p> <p>Mr. Brad Lockwood</p> <p>Ms. Petrice Podlesny</p>	<p style="text-align: right;">314</p> <p>1 (8:47 a.m.)</p> <p>2 JUDGE BENTON: We're on the record now.</p> <p>3 When we left, I believe we were ready to begin the</p> <p>4 cross-examination by Mr. Lee.</p> <p>5 If you're ready, you may proceed, sir.</p> <p>6 MR. LEE: Thank you.</p> <p>7 VUK RAJEVAC,</p> <p>8 having been previously duly sworn, testified as follows:</p> <p>9 CROSS-EXAMINATION (8:47 a.m.)</p> <p>10 BY MR. LEE:</p> <p>11 Q. Mr. Rajevac, how are you this morning?</p> <p>12 A. Good. Yourself?</p> <p>13 Q. I'm doing fine. Thank you. Yesterday when</p> <p>14 you testified about your role as an operations</p> <p>15 specialist, you were describing that role that you</p> <p>16 perform at Tricon. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And your only experience is working at Tricon?</p> <p>19 A. This is correct.</p> <p>20 Q. Okay. So what you've told us yesterday is how</p> <p>21 you handled your job at Tricon?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. You were not involved in the</p>
<p style="text-align: right;">313</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 312</p> <p>4 PRESENTATION ON BEHALF OF THE CLAIMANT (Continued)</p> <p>5 VUK RAJEVAC</p> <p>6 Cross-Examination by Mr. Lee..... 314</p> <p>7 Redirect Examination by Mr. Diaz-Arrastia... 336</p> <p>8 Recross-Examination by Mr. Lee..... 340</p> <p>9 LAURENTIU PAUL P ASCU (VIA VIDEOTAPE PLAYBACK)... 345</p> <p>10 RICHARD W. WILSON, Ph.D. (VIA VIDEOTAPE PLAYBACK) 384</p> <p>11 STEVE SIMPSON</p> <p>12 Direct Examination by Mr. Diaz-Arrastia..... 462</p> <p>13 Cross-Examination by Mr. Lee..... 492</p> <p>14 Redirect Examination by Mr. Diaz-Arrastia... 508</p> <p>15 Recross-Examination by Mr. Lee..... 512</p> <p>16 GARY COFRAN (VIA DEPOSITION EXCERPTS READBACK)... 529</p> <p>17 PRESENTATION ON BEHALF OF THE RESPONDENT</p> <p>18 LAURENTIU PAUL PASCU</p> <p>19 Direct Examination by Mr. Lee..... 542</p> <p>20 Cross-Examination by Mr. Diaz-Arrastia..... 554</p> <p>21 Reporter's Certificate Page..... 574</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">315</p> <p>1 negotiations between the traders and the broker for the</p> <p>2 transaction at issue, were you?</p> <p>3 A. No, I was not.</p> <p>4 Q. And you first heard about the alleged deal</p> <p>5 through Mr. Lockwood. Is that correct?</p> <p>6 A. Yes, that would be correct.</p> <p>7 Q. Would you take a look at -- in the joint</p> <p>8 exhibit notebook, Exhibit No. 5. And do you</p> <p>9 recognize -- well, we'll give everybody a chance to get</p> <p>10 to that. We've got so many notebooks.</p> <p>11 Do you recognize the second page through</p> <p>12 the rest of the exhibit as Tricon's sales contract?</p> <p>13 A. I recognize the document, yes.</p> <p>14 Q. Is that Tricon's sales contract?</p> <p>15 A. That's -- we call it Tricon's letter.</p> <p>16 Q. Okay. Well --</p> <p>17 A. It includes the main terms and the proposed</p> <p>18 additional terms on it.</p> <p>19 Q. Okay. Mr. Lockwood referred to it as a</p> <p>20 contract in his e-mail to Mr. Wilson on the first page,</p> <p>21 is that right, the first e-mail at the bottom?</p> <p>22 A. Yes, he did.</p> <p>23 Q. Okay. So I'm just -- that's what this</p> <p>24 document is. Correct?</p> <p>25 A. I -- you can make that decision. One says</p>

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<p style="text-align: right;">316</p> <p>1 e-mail. I call it differently but --</p> <p>2 Q. You testified about terms and conditions</p> <p>3 yesterday?</p> <p>4 A. Yes.</p> <p>5 Q. But does Joint Exhibit 5 contain Tricon's</p> <p>6 terms and conditions?</p> <p>7 A. Yes, it does.</p> <p>8 Q. And so yesterday when you said that -- you</p> <p>9 testified that the terms and conditions are very</p> <p>10 important to Tricon and to a deal, you were referring to</p> <p>11 the terms and conditions contained within Joint</p> <p>12 Exhibit 5. Correct?</p> <p>13 A. Yes, correct.</p> <p>14 Q. And, in fact, I think you said that the terms</p> <p>15 and conditions -- Tricon's terms and conditions have</p> <p>16 significant economic impact to a deal. Correct?</p> <p>17 A. I wasn't referring specifically to Tricon's</p> <p>18 conditions. Just general terms and conditions of any</p> <p>19 deal have a significant economic impact on that specific</p> <p>20 transaction, yeah.</p> <p>21 Q. And certainly the additional terms and</p> <p>22 conditions that are included in Joint Exhibit 5 would</p> <p>23 have some economic benefit to Tricon potentially.</p> <p>24 Correct?</p> <p>25 A. Potentially, yes, correct.</p>	<p style="text-align: right;">318</p> <p>1 with the letter.</p> <p>2 Q. Okay. Has Tricon to your knowledge ever</p> <p>3 performed a transaction solely on the basis of a</p> <p>4 confirmation like we see in Exhibit 4?</p> <p>5 A. Can you repeat that? Has Tricon ever --</p> <p>6 Q. To your knowledge, has Tricon ever performed a</p> <p>7 transaction solely on the basis of a confirmation like</p> <p>8 we see in Joint Exhibit No. 4?</p> <p>9 A. I mean, I don't know how to answer that</p> <p>10 question yes because it's -- that's what -- that's where</p> <p>11 the deal is agreed to. So everything that's agreed to,</p> <p>12 that's where it started so it is based on that.</p> <p>13 Now, if your question is has the -- has a</p> <p>14 transaction ever happened without other documents being</p> <p>15 passed, I wouldn't be able to recall that, but this is</p> <p>16 the essence of the transaction, so, yes, it's based on</p> <p>17 that.</p> <p>18 Q. And --</p> <p>19 A. That's where the deal was agreed to.</p> <p>20 Q. Okay. In every transaction that you have</p> <p>21 brokered through a broker where Tricon was selling a</p> <p>22 product to somebody else --</p> <p>23 A. Okay.</p> <p>24 Q. -- isn't it the case that you always have</p> <p>25 Tricon's sales contract in place?</p>
<p style="text-align: right;">317</p> <p>1 Q. You consider them to be valuable terms and</p> <p>2 conditions?</p> <p>3 A. I do.</p> <p>4 Q. You're a trader now?</p> <p>5 A. I am.</p> <p>6 Q. Have you ever done a deal through Ed Leyman?</p> <p>7 A. I have.</p> <p>8 Q. Would you take a look at Joint Exhibit 4? And</p> <p>9 if you'll take a look at the second page of that</p> <p>10 exhibit.</p> <p>11 A. Yes.</p> <p>12 Q. Do you recognize this as a confirmation that</p> <p>13 Mr. Leyman might send out?</p> <p>14 A. I do.</p> <p>15 Q. You do?</p> <p>16 A. Yes.</p> <p>17 Q. You've seen these before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Have you ever done a deal while you've been at</p> <p>20 Tricon solely on the broker confirmation?</p> <p>21 A. I'm not sure how you mean. The broker</p> <p>22 confirmation comes in first when you're dealing with a</p> <p>23 broker.</p> <p>24 Q. Correct.</p> <p>25 A. And then it's expanded upon with the other,</p>	<p style="text-align: right;">319</p> <p>1 A. I -- personally with my trades, yes, I do.</p> <p>2 Q. All right. And the sales contract would be?</p> <p>3 A. Similar to this.</p> <p>4 Q. Similar to Joint Exhibit 5?</p> <p>5 A. Correct.</p> <p>6 Q. All right. I believe your testimony is that</p> <p>7 you've never seen one of Tricon's sales contracts</p> <p>8 signed?</p> <p>9 A. On the spot deals, yes, that's correct.</p> <p>10 Q. And you'll agree with me that Joint Exhibit</p> <p>11 No. 5, the last page, contains places for both</p> <p>12 Mr. Lockwood and Mr. Wilson to sign. Correct?</p> <p>13 A. Correct, correct.</p> <p>14 Q. But it's your testimony that those signature</p> <p>15 blanks are meaningless?</p> <p>16 A. I never said they're meaningless. I'm just</p> <p>17 saying that I don't see them signed in spot deals.</p> <p>18 Q. And you've never seen them signed?</p> <p>19 A. On spot deals, I don't recall ever seeing them</p> <p>20 signed.</p> <p>21 Q. And do you know why signature blanks are in</p> <p>22 there?</p> <p>23 A. I can only speculate it's an industry</p> <p>24 standard -- not standard but industry I guess a custom.</p> <p>25 I can speculate that because whoever sends it I guess</p>

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<p style="text-align: right;">320</p> <p>1 doesn't sign it first, waits for the other people's</p> <p>2 comments and probably the signatures get lost somewhere</p> <p>3 in that process, but that hasn't stopped the deal from</p> <p>4 happening in the past.</p> <p>5 Q. The answer is you don't know why --</p> <p>6 A. No, I don't know exactly why, no.</p> <p>7 Q. Okay. And did I -- did you testify yesterday</p> <p>8 that the Tricon sales contract was not intended to</p> <p>9 cancel the confirmation letter that had been sent by the</p> <p>10 broker?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Would you take a look at Page 3 of Joint</p> <p>13 Exhibit 5? This is Page 3 of the sales contract.</p> <p>14 A. Okay.</p> <p>15 Q. And at the bottom -- and, again, this is the</p> <p>16 sales contract that Tricon sent to Vinmar. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. At the very bottom, there's a statement in the</p> <p>19 sales contract. It says, "Broker." Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. It says, "This cancels and supercedes</p> <p>22 any broker correspondence in relation to this</p> <p>23 transaction and shall be for the sole purpose of</p> <p>24 documenting commission, if any." Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">322</p> <p>1 Q. Okay. Now, some of these terms in the sales</p> <p>2 contract that Tricon sent, I just want to ask a couple</p> <p>3 of things about the -- these provisions. If you take a</p> <p>4 look at Page 2 of the sales contract, Paragraph No. 8</p> <p>5 under taxes.</p> <p>6 A. Uh-huh, yes.</p> <p>7 Q. Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Now, what this provision says is that if there</p> <p>10 are any taxes that are imposed as a part of this</p> <p>11 transaction that the buyer will pay for those taxes. Is</p> <p>12 that correct?</p> <p>13 A. Let me read through it real quick. Yes.</p> <p>14 Q. Okay. And it says that if the -- if the taxes</p> <p>15 are for the seller -- so that would be Tricon. So if</p> <p>16 Tricon is required to pay any taxes on this transaction,</p> <p>17 then Tricon has the right to pass those taxes on to</p> <p>18 Vinmar in this situation. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. That type of provision is not</p> <p>21 included in the confirmation from the broker. Correct?</p> <p>22 A. I would assume that's correct.</p> <p>23 Q. And it's certainly possible under this</p> <p>24 situation or any other situation that there might be</p> <p>25 taxes that would increase the amount that Vinmar was</p>
<p style="text-align: right;">321</p> <p>1 Q. Okay. So the -- so the sales contract says it</p> <p>2 cancels and supercedes any broker correspondence?</p> <p>3 A. Yes, it does. It says that.</p> <p>4 Q. Okay. It's your testimony that that</p> <p>5 profession has no meaning?</p> <p>6 A. My testimony is that I understand that</p> <p>7 provision as that this is a document that is re --</p> <p>8 replaces -- it doesn't cancel the deal. It replaces the</p> <p>9 documentation or the correspondence that a broker in</p> <p>10 this case, MOAB, would send and obviously it expands</p> <p>11 upon with some terms that the brokers don't deal with.</p> <p>12 Brokers deal with the main terms of the</p> <p>13 deal. So I understand this here is a document that</p> <p>14 expands upon and replaces the document that MOAB sent</p> <p>15 so...</p> <p>16 Q. Okay. But it says --</p> <p>17 A. It doesn't say that it cancels the deal. I</p> <p>18 don't see that if that's what you mean.</p> <p>19 Q. Well, that's not. My question was, doesn't it</p> <p>20 say that it cancels and supercedes the broker</p> <p>21 confirmation?</p> <p>22 A. Broker correspondence.</p> <p>23 Q. Which would include the confirmation.</p> <p>24 Correct?</p> <p>25 A. The document, yes.</p>	<p style="text-align: right;">323</p> <p>1 required to pay under this deal?</p> <p>2 A. Yes.</p> <p>3 Q. The force majeure provision at Paragraph 6, is</p> <p>4 that something that Tricon considers to be important?</p> <p>5 A. Yes.</p> <p>6 Q. What about Page 3 of the sales contract under</p> <p>7 product use? Now, what this provision in the sales</p> <p>8 contract says is that Vinmar in this case that we're</p> <p>9 talking about, something that was sent to Vinmar, so if</p> <p>10 we assume Vinmar's the buyer.</p> <p>11 It says, "Vinmar represents and warrants</p> <p>12 that the product purchased hereunder shall be used for</p> <p>13 other than gasoline blending purposes in the United</p> <p>14 States."</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Now, that was not included in the broker</p> <p>19 confirmation. Correct?</p> <p>20 A. No.</p> <p>21 Q. And, in fact, as you understand the</p> <p>22 transaction, Vinmar had used -- if it purchased the</p> <p>23 mixed xylenes, it could use that product for whatever</p> <p>24 reason it wanted to. Correct?</p> <p>25 A. As far as I understood, yes.</p>

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<p style="text-align: right;">324</p> <p>1 MR. LEE: Do you need to take a --</p> <p>2 JUDGE BENTON: No. I'm fine.</p> <p>3 Q. (BY MR. LEE) And, in fact, if that's going to</p> <p>4 happen, Vinmar under this contract is required to notify</p> <p>5 Tricon as soon as possible. Correct?</p> <p>6 A. This is correct.</p> <p>7 Q. And is that because -- I mean, that has some</p> <p>8 benefit to Tricon. Correct? They want to make sure</p> <p>9 that the product is not being used for other than</p> <p>10 gasoline blending purposes in the United States?</p> <p>11 A. Tricon has no -- I believe -- I'm not sure.</p> <p>12 You would know that better as a lawyer. I believe there</p> <p>13 was some kind of a provision about not using</p> <p>14 petrochemicals or aromatics and gasoline for gasoline</p> <p>15 blending purposes. This has nothing to do with Tricon.</p> <p>16 Tricon doesn't really care what Vinmar</p> <p>17 uses the product for. I think this is a problem with</p> <p>18 either state or federal law or some kind of a provision.</p> <p>19 Q. Okay. But it's included in the form of a</p> <p>20 sales contract?</p> <p>21 A. It's a form of protection --</p> <p>22 Q. Right.</p> <p>23 A. -- for Tricon, that's correct.</p> <p>24 Q. Yesterday you were asked to look at Joint</p> <p>25 Exhibit No. 4 and Joint Exhibit No. 5 so that's the</p>	<p style="text-align: right;">326</p> <p>1 A. As far as I can see yesterday, they were, but</p> <p>2 did you want to tell me --</p> <p>3 Q. Well, I mean, let's just, for instance, look</p> <p>4 at the quantity. In the Joint Exhibit 4, the quantity</p> <p>5 says that it's "5,000 metric tons plus or minus</p> <p>6 5 percent, seller's option." Right?</p> <p>7 A. Correct.</p> <p>8 Q. That's the language in the --</p> <p>9 A. In the MOAB confirmation.</p> <p>10 Q. -- MOAB confirmation.</p> <p>11 Now, if you look at the Tricon's sales</p> <p>12 contract under quantity, it says, "5,000 metric tons</p> <p>13 plus or minus 5 percent, vessel's option"?</p> <p>14 A. This is correct.</p> <p>15 Q. It's not the same language, is it?</p> <p>16 A. You're right, it's not the same language.</p> <p>17 Q. Okay. And then if we look at the delivery</p> <p>18 term under the confirmation, which is Joint Exhibit 4,</p> <p>19 so flip back to MOAB's letter. It says -- well, it's</p> <p>20 got three paragraphs there. Correct?</p> <p>21 A. Tell me which one you're looking at.</p> <p>22 Q. Under delivery.</p> <p>23 A. Okay. Yes, I do.</p> <p>24 Q. "CFR basis one safe berth/port major ports</p> <p>25 Taiwan or Ulsan Korea."</p>
<p style="text-align: right;">325</p> <p>1 confirm and the sales contract. And the question that</p> <p>2 you were asked is, are all of the essential terms</p> <p>3 identical?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember that question?</p> <p>6 A. Yes.</p> <p>7 Q. What were the essential terms that you were</p> <p>8 referring to between the two documents?</p> <p>9 A. I was talking about the purchasing party,</p> <p>10 Vinmar in this case, the product, the quantity, the</p> <p>11 quality, the price. In this case, there was a promised</p> <p>12 delivery window, which was the first half of September</p> <p>13 in either Ulsan or Taiwan, and that's about it.</p> <p>14 Q. Okay. So just to make sure, you said</p> <p>15 purchasing party, product, quality, quantity, price and</p> <p>16 delivery window?</p> <p>17 A. Correct.</p> <p>18 Q. And you've identified those as the essential</p> <p>19 terms?</p> <p>20 A. Yes. I would say those are the essential</p> <p>21 terms.</p> <p>22 Q. Okay. Now, you'll agree with me that if you</p> <p>23 look at the confirmation and the sales contract and you</p> <p>24 compare those provisions they're not identical, are</p> <p>25 they?</p>	<p style="text-align: right;">327</p> <p>1 A. Uh-huh.</p> <p>2 Q. Okay. Now, the terms in the Tricon sales</p> <p>3 contract, they're not the same completely, are they?</p> <p>4 A. That's just the verbiage that we have. In the</p> <p>5 Ulsan Taiwan, we have all these set ports in our system</p> <p>6 that we can pick from. You can't just type in. And</p> <p>7 Ulsan Taiwan versus Taiwan or Ulsan Korea, I don't see a</p> <p>8 big difference there.</p> <p>9 Q. Well --</p> <p>10 A. Actually, in fact, Ulsan Taiwan versus Taiwan</p> <p>11 Ulsan so --</p> <p>12 Q. Well, I'm just -- is it your testimony that</p> <p>13 the delivery term in the confirmation is identical to</p> <p>14 the delivery terms in the sales contract?</p> <p>15 A. Essentially it is. I mean, the wording,</p> <p>16 obviously there's three lines here and it expands upon</p> <p>17 it a little more versus ours is just one line, but</p> <p>18 essentially they're the same as far as I can see, yes.</p> <p>19 Q. The -- you understand that Mr. Lockwood told</p> <p>20 you that there was a guaranteed first half of September</p> <p>21 delivery into Asia. Correct?</p> <p>22 A. Yes, this is correct.</p> <p>23 Q. And you will not find anything in the Tricon</p> <p>24 sales contract that guarantees delivery first half of</p> <p>25 September?</p>

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<p style="text-align: right;">328</p> <p>1 A. I think -- I think we've already touched upon 2 this. Ship period in our system means when -- in a CFR 3 case, especially for Asia when there is a guaranteed 4 window, that means -- it says here, "September 1 to 5 September 15th." 6 That means what the delivery window is, 7 between September 1st and September 15th SO -- 8 Q. That's Tricon's system. I'm just asking, will 9 I see any -- is there anything in the contract itself 10 that says that it is guaranteed first half September? 11 A. Yes, the ship period. 12 Q. Okay. Do you see anywhere -- the confirmation 13 required Tricon to give Vinmar a minimum of five working 14 days notice of actual discharge date. Do you see that? 15 A. Do you want to point it out to me? 16 Q. Under the delivery term. 17 A. "Minimum of five working days notice of actual 18 discharge date," yes. 19 Q. Okay. And do you see that in Tricon's sales 20 contract? 21 A. No, I did not see that in Tricon's sales 22 contract. 23 Q. Let me ask you now about Joint Exhibit 14. 24 And I think you testified about this document yesterday. 25 And this was your response to Mr. Pascu's e-mail of the</p>	<p style="text-align: right;">330</p> <p>1 remember, didn't Mr. Pascu tell you in his e-mail, which 2 is on this next page, that he would send you Vinmar's 3 purchase order? 4 A. Yeah, I believe he did mention that. 5 Q. So he sent you an e-mail, said, "Here's some 6 comments on the sales contract. I will be sending you a 7 purchase order"? 8 A. Yes, I believe that's what he says. 9 Q. The purchase order was never sent to you. 10 Correct? 11 A. I never received it, no. 12 Q. Before the purchase order was sent, you heard 13 from Rick Wilson that he understood the deal required 14 U.S. origin mixed xylenes. Correct? 15 A. Yeah. I believe a couple of days after my 16 e-mail to Pascu he did say something about believing it 17 would be U.S. origin, yes. 18 Q. All right. And my question was, before you 19 every received a purchase order from Vinmar you heard 20 from Mr. Wilson that his understanding of the deal was 21 it required Tricon to supply U.S. origin? 22 A. Yeah, but it's different. We never received 23 the first order so everything -- any correspondence 24 would be before then so -- 25 Q. Okay. And you had responded to Mr. Wilson's</p>
<p style="text-align: right;">329</p> <p>1 same day. Correct? 2 A. This is correct. 3 Q. Did you -- you know that Laurentiu Pascu was 4 Vinmar's logistics person? 5 A. I did know he was, yes. 6 Q. Okay. And you also knew that Mr. Pascu did 7 not negotiate any of the terms of this alleged agreement 8 through Ed Leyman? 9 A. I didn't know that. I could have assumed -- 10 Q. Okay. 11 A. -- but I didn't know that he didn't. 12 Q. Did you ever talk to Mr. Pascu in the days 13 between July 22nd and July 31, 2008? 14 A. I don't recall ever talking to him on the 15 phone. I believe the only correspondence between him 16 and I were -- were -- they're in the e-mails. 17 Q. Okay. Now, in your first point on your e-mail 18 to Mr. Pascu, you say, "Your comments on the contract 19 well noted and accepted." Right? 20 A. That's correct. 21 Q. And you were referring to some handwritten 22 comments that Mr. Pascu had sent you on this sales 23 contract? 24 A. Yes, I was. 25 Q. Now, we can look at it, but I think you'll</p>	<p style="text-align: right;">331</p> <p>1 e-mail by saying, "No, we didn't guarantee U.S. origin 2 mixed xylenes"? 3 A. Correct. 4 Q. And it's your understanding that Tricon never 5 intended to supply U.S. origin mixed xylenes? 6 A. Absolutely. 7 Q. Okay. Now, you didn't accept all of 8 Mr. Pascu's comments on the sales contract. Correct? 9 A. Correct. 10 Q. In fact, you say, "We don't agree to the 11 demurrage time bar"? 12 A. Yes. 13 Q. And that was never resolved, was it? 14 A. Yes. Never heard back from Mr. Pascu. 15 Q. And you've never seen a signed copy of the 16 sales contract? 17 A. This is correct. 18 Q. Now, on Joint Exhibit 4 under the inspection 19 provision, this confirmation says that "The quantity and 20 quality of the mixed xylenes will be inspected at the 21 load port by an independent inspector mutually agreed 22 upon with costs to be shared equally between buyer and 23 seller"? 24 A. Uh-huh. 25 Q. What that means is that before the mixed</p>

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<p style="text-align: right;">332</p> <p>1 xylenes is loaded onto a ship, Vinmar has the right to</p> <p>2 ensure that the quality and the quantity comply with the</p> <p>3 proposed agreement?</p> <p>4 A. No. It says that they can pay for half of the</p> <p>5 inspector and agree to it together with us.</p> <p>6 Q. Right. But it's supposed to be done before</p> <p>7 it's loaded. Right?</p> <p>8 A. Correct, in an ideal situation, yes.</p> <p>9 Q. Right. And the purpose of that is to ensure</p> <p>10 that the product that is delivered meets the quality</p> <p>11 specification. Correct?</p> <p>12 A. Having an inspector there, yes, that is the --</p> <p>13 that is the purpose.</p> <p>14 Q. Right. I mean, the inspector is the one that</p> <p>15 tests the product to confirm that it meets this</p> <p>16 ASTM 5211 standard?</p> <p>17 A. Right. And issues a certificate of analysis,</p> <p>18 correct.</p> <p>19 Q. Right. And also the inspector would quantify</p> <p>20 or test the quantity, make sure that it met the proposed</p> <p>21 contract?</p> <p>22 A. Yes, this is correct.</p> <p>23 Q. And, again, that's to be done at the load port</p> <p>24 prior to loading onto the ship?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">334</p> <p>1 to keep in mind is that we promised a window of 15 days</p> <p>2 arrival in Asia. And in order to comply with that</p> <p>3 promise in performing our deal, we had to leave</p> <p>4 ourselves -- give ourselves option where -- you also</p> <p>5 have to keep in mind August 8th was the day that -- by</p> <p>6 which Vinmar was supposed to declare their discharge</p> <p>7 port.</p> <p>8 Well, there is a minimum of 35 days of</p> <p>9 sailing time between the U.S. Gulf and Asia. Well, by</p> <p>10 the time you find a vessel, load it and leave after the</p> <p>11 8th declaration, there's a huge chance we wouldn't have</p> <p>12 made it to Korea, Taiwan, whatever the -- whatever</p> <p>13 Vinmar had declared.</p> <p>14 So we had to leave ourselves with the</p> <p>15 option to either give the cargo that would be on the</p> <p>16 water already or give the cargo of a closer origin, i.e.</p> <p>17 Asian origin. That doesn't mean that we wouldn't have</p> <p>18 given Vinmar all the documentation that would have been</p> <p>19 issued by an independent inspector at that load port,</p> <p>20 including quality and quantity.</p> <p>21 That's just the nature of the business.</p> <p>22 When you're asking for a guaranteed window, you have to</p> <p>23 realize that, especially with declaration, it's so close</p> <p>24 to the -- to the potential loading date, say the</p> <p>25 U.S. Gulf, that you can't always be present and be able</p>
<p style="text-align: right;">333</p> <p>1 Q. Now, I'm going to ask you to flip back to</p> <p>2 Joint Exhibit 14. And if we look at the second page of</p> <p>3 that e-mail, it's Mr. Pascu's e-mail to you on</p> <p>4 July 29th, 2008. And he -- in the second paragraph, he</p> <p>5 asks a couple of questions. Correct?</p> <p>6 He says, "Please advise." First he asks</p> <p>7 about the advising bank. But then the second question</p> <p>8 he asks is, "Advise when shipment is expected." Right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. "Be informed that no shipment can take place</p> <p>11 without us being informed for insurance purpose and</p> <p>12 without presence of an independent surveyor" --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- "in this order. Please let us have vessel</p> <p>15 details and port of loading." Right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And so what he's asking for is we need to know</p> <p>18 where you're going to load it and when it's going to be</p> <p>19 loaded so we can inspect it?</p> <p>20 A. Correct.</p> <p>21 Q. Now, if -- but Tricon didn't necessarily</p> <p>22 intend to allow Vinmar to inspect the quality before it</p> <p>23 was loaded?</p> <p>24 A. Oh, we would have been more than happy to let</p> <p>25 Vinmar inspect the -- before the loading. What you have</p>	<p style="text-align: right;">335</p> <p>1 to have your inspector and all that if you're going to</p> <p>2 require that window so that's what happened here.</p> <p>3 Q. So, I mean, if the deal required Vinmar or</p> <p>4 gave Vinmar the opportunity to inspect it prior to</p> <p>5 loading, you didn't necessarily intend to give them that</p> <p>6 right. Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And that's what you're referring to</p> <p>9 in -- when you answered this question on the</p> <p>10 page before, Joint Exhibit No. 14, No. 3, where you</p> <p>11 said, "Hey, we may give you a deep sea cargo"?</p> <p>12 A. Correct.</p> <p>13 Q. "We may even give you something of Asian</p> <p>14 origin"?</p> <p>15 A. Correct, in which case if it was Asian origin</p> <p>16 we would have been more than happy to let Vinmar</p> <p>17 participate in the inspection. There would have been</p> <p>18 plenty of time to do so.</p> <p>19 Q. Okay.</p> <p>20 A. It was only deep sea cargo which would --</p> <p>21 which would likely -- in which case we would likely have</p> <p>22 to give them already issued certificates of quality and</p> <p>23 quantity for the -- for the xylene load.</p> <p>24 MR. LEE: Pass the witness.</p> <p>25 JUDGE BENTON: Mr. Diaz-Arrastia?</p>

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<p style="text-align: right;">336</p> <p>1 MR. DIAZ-ARRASTIA: Thank you, Your Honor.</p> <p>2 REDIRECT EXAMINATION (9:13 a.m.)</p> <p>3 BY MR. DIAZ-ARRASTIA:</p> <p>4 Q. I have a few questions. Mr. Pascu, let me</p> <p>5 just pick up with this inspection issue that you -- I'm</p> <p>6 sorry. Mr. Rajevac.</p> <p>7 JUDGE BENTON: Okay. You're ahead of me.</p> <p>8 MR. DIAZ-ARRASTIA: I'm ahead of you now,</p> <p>9 Judge.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Rajevac, on this</p> <p>11 inspection issue we just finished talking about -- and I</p> <p>12 think it's what you just finished saying. Now, if after</p> <p>13 Mr. Pascu had seen your note that said, "We could give</p> <p>14 you a deep sea cargo already on the water" or "We could</p> <p>15 give you Asian origin," if Mr. Pascu had said, "Look, we</p> <p>16 absolutely, positively have to be there at the</p> <p>17 inspection," what would you have done?</p> <p>18 A. I would have said, "You're going to have to</p> <p>19 declare your discharge port earlier so that we can</p> <p>20 arrange for that."</p> <p>21 Q. Or you could have said, "We'll give you Asian</p> <p>22 origin if you can inspect" --</p> <p>23 A. Exactly. Those are the two options.</p> <p>24 Q. Okay. Now, a moment ago I think Mr. Lee asked</p> <p>25 you that Tricon never intended to deliver U.S. origin MX</p>	<p style="text-align: right;">338</p> <p>1 Paragraph 8 that had -- has to do with taxes --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- Paragraph 6 that has to do with force</p> <p>4 majeure, I think Paragraph 10 that has to do with</p> <p>5 product use.</p> <p>6 A. Correct.</p> <p>7 Q. Now, let me ask you, sir, could -- after</p> <p>8 looking at Joint Exhibit 6, with regard to any of those</p> <p>9 paragraphs, could Mr. Pascu have just told you, "Well, I</p> <p>10 don't agree to that" or "I want to change it"?</p> <p>11 A. He could have.</p> <p>12 Q. Okay. And, in fact, that's what he did with</p> <p>13 transfer of title and risk? He asked for that to be</p> <p>14 changed?</p> <p>15 A. Correct.</p> <p>16 Q. So if he doesn't ask to be changed, that means</p> <p>17 it's okay with him. Right?</p> <p>18 A. That's how I understood it, yes.</p> <p>19 Q. Okay. Now, let's take a look at the language</p> <p>20 that you talked about when you compared Joint Exhibit 4</p> <p>21 to Joint Exhibit 5 and Mr. Lee asked you about seller's</p> <p>22 option versus vessel's option, different words.</p> <p>23 A. Right.</p> <p>24 Q. As a practical matter in this deal, did</p> <p>25 that -- does that have the same effect?</p>
<p style="text-align: right;">337</p> <p>1 and you agreed with that. Now, is that completely</p> <p>2 right? Is it that you were not going --</p> <p>3 A. I didn't understand --</p> <p>4 Q. -- that you absolutely --</p> <p>5 A. -- it as didn't intend to. I understood it as</p> <p>6 at this point -- we didn't guarantee. Maybe I misheard.</p> <p>7 Q. Yeah.</p> <p>8 A. There was no intention to deliver any specific</p> <p>9 or no intention to deliver -- there was no -- at that</p> <p>10 point there was no specific decision on what's going to</p> <p>11 be delivered.</p> <p>12 Q. There was no -- there was no guarantee of U.S.</p> <p>13 origin?</p> <p>14 A. Right, exactly. There was no guarantee.</p> <p>15 Q. But you might supply U.S. origin?</p> <p>16 A. Oh, absolutely.</p> <p>17 Q. And, in fact, when you told Mr. Pascu that you</p> <p>18 may provide a deep sea cargo, you meant something that</p> <p>19 would most likely be U.S. origin?</p> <p>20 A. Correct.</p> <p>21 Q. Or you would do Asian origin?</p> <p>22 A. Correct.</p> <p>23 Q. Now, with regard to Joint Exhibit 5, if you</p> <p>24 could take a look at that, sir. And that is the Tricon</p> <p>25 terms and conditions. Mr. Lee asked you about</p>	<p style="text-align: right;">339</p> <p>1 A. In a CFR deal, yes, it does, because we're the</p> <p>2 ones selecting the vessel and negotiating the quantity</p> <p>3 to be loaded on the vessel.</p> <p>4 Q. And, similarly, with regard to ship period</p> <p>5 versus arrival at destination, isn't that exactly what</p> <p>6 Mr. Pascu asked to be changed?</p> <p>7 A. Yeah. He asked to change the wording that we</p> <p>8 had that our system used and I believe I agreed to it.</p> <p>9 Q. Yeah, I think you agreed to it and that's</p> <p>10 because you thought it meant the same thing?</p> <p>11 A. Yeah, absolutely.</p> <p>12 Q. Mr. Rajevac, have -- when you used to work as</p> <p>13 an ops specialist, did you ever have occasion where you</p> <p>14 loaded material from a U.S. Gulf port that had been</p> <p>15 stored with foreign materials stored in a bonded tank?</p> <p>16 A. Yes, I have.</p> <p>17 Q. Okay. Can you tell me about that experience?</p> <p>18 A. I had an instance of a different product, MEG,</p> <p>19 where the product was of Mexican origin and it was</p> <p>20 intended for sale in Europe. And there was a -- there</p> <p>21 was no vessel directly sailing from Mexico to Europe so</p> <p>22 what we did is we took a vessel that met the timing that</p> <p>23 we agreed to with the supplier, brought it into the U.S.</p> <p>24 Gulf, stored it in a bonded tank, which preserved the</p> <p>25 Mexican origin.</p>

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<p style="text-align: right;">340</p> <p>1 We stored it for probably three or four</p> <p>2 days and then a different vessel from U.S. Gulf to</p> <p>3 Europe loaded it and sent it to Europe and we still got</p> <p>4 the benefit of bringing the Mexican origin cargo into</p> <p>5 Europe.</p> <p>6 Q. And that is because on that second vessel,</p> <p>7 that second vessel loaded it in a U.S. port. That was</p> <p>8 the load port?</p> <p>9 A. Correct.</p> <p>10 Q. But the material was still of Mexican origin,</p> <p>11 not U.S. origin?</p> <p>12 A. Correct.</p> <p>13 MR. DIAZ-ARRASTIA: Pass the witness.</p> <p>14 JUDGE BENTON: Mr. Lee?</p> <p>15 MR. LEE: Just a few follow-up questions,</p> <p>16 if I may.</p> <p>17 RE CROSS-EXAMINATION (9:18 a.m.)</p> <p>18 BY MR. LEE:</p> <p>19 Q. Looking at this Joint Exhibit No. 5, the sales</p> <p>20 contract, if the counterparty -- and let's look at</p> <p>21 Page 2 of 4. If a counterparty struck through the</p> <p>22 provision law and jurisdiction, instead of saying "Texas</p> <p>23 law" they put the "law of Singapore," that's something</p> <p>24 that you could agree to on behalf of Tricon?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">342</p> <p>1 to talk to somebody. I've never -- I've never been in</p> <p>2 such a situation so I don't really know how to answer</p> <p>3 that.</p> <p>4 Q. Okay. What if somebody came back -- and let's</p> <p>5 go back to my example then on number -- let's look at</p> <p>6 No. 3 on Page 2. If they struck through Texas law and</p> <p>7 said Singapore law, would you have to ask -- would you</p> <p>8 ask somebody within Tricon as to whether that was</p> <p>9 acceptable?</p> <p>10 A. More than likely what I would do at first is,</p> <p>11 yes, I would check with somebody and, say, "Hey, they're</p> <p>12 asking for Singapore instead of Texas." And I would</p> <p>13 say, "The transaction has nothing to do with Singapore</p> <p>14 so there's no reason to accept that," but if somebody --</p> <p>15 if Brad agreed to accept it, I would be happy to go back</p> <p>16 and accept it.</p> <p>17 Q. So you would go back to the trader in that</p> <p>18 situation and ask him?</p> <p>19 A. If he was available.</p> <p>20 Q. You'd ask somebody within Tricon. Correct?</p> <p>21 A. More than likely, yes.</p> <p>22 Q. And that would be true with all of these</p> <p>23 provisions if somebody struck through them. Correct?</p> <p>24 A. No, it wouldn't be.</p> <p>25 Q. Certainly with force majeure?</p>
<p style="text-align: right;">341</p> <p>1 Q. Okay. If the counterparty struck through the</p> <p>2 provision additional collateral requirement, that's</p> <p>3 something that you could accept on Tricon's behalf?</p> <p>4 A. Yes.</p> <p>5 Q. Same thing for the Incoterms?</p> <p>6 A. Correct.</p> <p>7 Q. Same thing for force majeure?</p> <p>8 A. Correct.</p> <p>9 Q. Same thing for transfer title and risk?</p> <p>10 A. Correct.</p> <p>11 Q. Taxes?</p> <p>12 A. Correct.</p> <p>13 Q. Arbitration on the next page?</p> <p>14 A. Yes.</p> <p>15 Q. Product use?</p> <p>16 A. Yes.</p> <p>17 Q. Price and payment?</p> <p>18 A. Yes.</p> <p>19 Q. Interest?</p> <p>20 A. Yes.</p> <p>21 Q. So if a counterparty -- what if a counterparty</p> <p>22 struck every one of these provisions? Do you have the</p> <p>23 authority to accept that on behalf of Tricon?</p> <p>24 A. Well, I have the authority, yes. Whether I</p> <p>25 would do it, the answer is probably not. I would have</p>	<p style="text-align: right;">343</p> <p>1 A. If somebody struck out force majeure</p> <p>2 completely?</p> <p>3 Q. Yes.</p> <p>4 A. Yes. I would probably check with somebody on</p> <p>5 that one.</p> <p>6 Q. What about on the taxes?</p> <p>7 A. Probably.</p> <p>8 Q. Arbitration?</p> <p>9 A. Same thing.</p> <p>10 Q. You'd check with somebody first?</p> <p>11 A. Yeah.</p> <p>12 Q. And is that because you understand that that</p> <p>13 might have an impact on how the deal was carried out?</p> <p>14 A. Correct.</p> <p>15 (The time is 9:21 a.m.)</p> <p>16 MR. LEE: I'll pass the witness.</p> <p>17 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>18 MR. DIAZ-ARRASTIA: I have no further</p> <p>19 questions.</p> <p>20 JUDGE BENTON: Mr. Rajevac, bad news.</p> <p>21 You're excused.</p> <p>22 THE WITNESS: Okay. Thank you very much.</p> <p>23 JUDGE BENTON: Your next witness is a</p> <p>24 depo, I understand.</p> <p>25 MR. DIAZ-ARRASTIA: The next witness is</p>

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<p style="text-align: right;">344</p> <p>1 the depo of Mr. Pascu.</p> <p>2 JUDGE BENTON: And it lasts how long?</p> <p>3 MR. DIAZ-ARRASTIA: It's 45 minutes.</p> <p>4 JUDGE BENTON: Okay. Perfect. All right.</p> <p>5 Very good.</p> <p>6 MR. LEE: And just to -- we have not</p> <p>7 included -- we did not at this point intend to bring</p> <p>8 Mr. Pascu to testify.</p> <p>9 JUDGE BENTON: Okay. Very good.</p> <p>10 MR. LEE: He will testify live so this</p> <p>11 would be their --</p> <p>12 JUDGE BENTON: Very good.</p> <p>13 MR. LEE: -- their submissions.</p> <p>14 JUDGE BENTON: Understood.</p> <p>15 MR. LEE: Thank you.</p> <p>16 JUDGE BENTON: All right. Let's proceed.</p> <p>17 MR. LEE: And we expect to have our -- I</p> <p>18 think the next thing is the video --</p> <p>19 MR. DIAZ-ARRASTIA: The incomes video is</p> <p>20 Mr. Wilson, who will also be by video.</p> <p>21 MR. LEE: And somebody from my office is</p> <p>22 going to help us. We did those cuts so she should be</p> <p>23 here, but we might want to take a break after this so</p> <p>24 that she can set it up. It shouldn't take very long,</p> <p>25 but if we can sit through this if that's okay and then</p>	<p style="text-align: right;">346</p> <p>1 A. I went to school in Romania. I did my high</p> <p>2 school in Romania and then I done university studies in</p> <p>3 Romania. I've done my master's study in Houston at</p> <p>4 University of Houston.</p> <p>5 Q. Are you a native of Romania?</p> <p>6 A. Correct, yes.</p> <p>7 Q. And you attended university in Romania?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Where did you attend university in</p> <p>10 Romania?</p> <p>11 A. Academy of Academic Studies.</p> <p>12 Q. And where is that; what city?</p> <p>13 A. In Bucharest.</p> <p>14 Q. Did you get a degree?</p> <p>15 A. Yes.</p> <p>16 MR. DIAZ-ARRASTIA: Can you possibly --</p> <p>17 A. Bachelor degree.</p> <p>18 (This is the end of the playback of the</p> <p>19 edited version of the videotaped deposition of Laurentiu</p> <p>20 Paul Pascu that was originally taken on May 27, 2010.)</p> <p>21 MR. DIAZ-ARRASTIA: Are you able --</p> <p>22 JUDGE BENTON: Yeah, we can hear.</p> <p>23 JUDGE DAVIDSON: We need more volume.</p> <p>24 MR. DIAZ-ARRASTIA: Well, that's the</p> <p>25 problem we're having. The speakers aren't working.</p>
<p style="text-align: right;">345</p> <p>1 take a break.</p> <p>2 JUDGE BENTON: Okay. Yeah, that's what</p> <p>3 our plan is to break after this one.</p> <p>4 MR. LEE: I apologize.</p> <p>5 JUDGE BENTON: No problem.</p> <p>6 MS. LARSON: Is it possible to take a</p> <p>7 three-minute recess?</p> <p>8 JUDGE BENTON: Perfect. We're off the</p> <p>9 record for a short break.</p> <p>10 (Recess from 9:25 a.m. to 9:29 a.m.)</p> <p>11 JUDGE BENTON: Let's proceed.</p> <p>12 (At this time the edited version of the</p> <p>13 videotaped deposition of Laurentiu Paul Pascu that was</p> <p>14 originally taken on May 27, 2010, was played in the</p> <p>15 arbitration. The court reporter at the arbitration</p> <p>16 reported such proceedings and this is her transcription</p> <p>17 of same.)</p> <p>18 LAURENTIU PAUL PASCU,</p> <p>19 having been first duly sworn, testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. DIAZ-ARRASTIA:</p> <p>22 Q. Sir, could you state your full name for the</p> <p>23 record, please?</p> <p>24 A. Laurentiu Paul Pascu.</p> <p>25 Q. Tell me where you went to school, sir.</p>	<p style="text-align: right;">347</p> <p>1 It's coming from the computer.</p> <p>2 JUDGE DAVIDSON: You need another minute</p> <p>3 or two to work on the speakers?</p> <p>4 MR. DIAZ-ARRASTIA: Yes, I think we do</p> <p>5 probably.</p> <p>6 JUDGE DAVIDSON: Then take -- I mean --</p> <p>7 MR. DIAZ-ARRASTIA: My apologies.</p> <p>8 JUDGE BENTON: All right. We're off the</p> <p>9 record again for a short break.</p> <p>10 (Recess from 9:30 a.m. to 9:36 a.m.)</p> <p>11 JUDGE BENTON: All right. We're back on</p> <p>12 the record. Let's proceed.</p> <p>13 (At this time the edited version of the</p> <p>14 videotaped deposition of Laurentiu Paul Pascu that was</p> <p>15 originally taken on May 27, 2010, was played in the</p> <p>16 arbitration. The court reporter at the arbitration</p> <p>17 reported such proceedings and this is her transcription</p> <p>18 of same.)</p> <p>19 LAURENTIU PAUL PASCU,</p> <p>20 having been first duly sworn, testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. DIAZ-ARRASTIA:</p> <p>23 Q. Okay. Tell me where you went to school, sir.</p> <p>24 A. I went to school in Romania. I did my high</p> <p>25 school in Romania and then I done the university studies</p>

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<p style="text-align: right;">348</p> <p>1 in Romania. I done my master's study in Houston at the</p> <p>2 University of Houston.</p> <p>3 Q. Are you a native of Romania?</p> <p>4 A. Correct, yes.</p> <p>5 Q. You attended university in Romania?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Where did you attend university in</p> <p>8 Romania?</p> <p>9 A. Academy of Economic Studies.</p> <p>10 Q. And where is that, what city?</p> <p>11 A. In Bucharest.</p> <p>12 Q. Did you get a degree?</p> <p>13 A. Yes.</p> <p>14 Q. What was that degree?</p> <p>15 A. Bachelor degree.</p> <p>16 Q. In what year?</p> <p>17 A. 2001.</p> <p>18 Q. Did you have an area of concentration in your</p> <p>19 studies?</p> <p>20 A. Yes.</p> <p>21 Q. And what was that?</p> <p>22 A. Merchandise science and quality management.</p> <p>23 Q. Okay. And you said you have a master's degree</p> <p>24 from the University of Houston?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">350</p> <p>1 think that he was a trader in Vinmar. I am not -- I am</p> <p>2 not sure, but from my perspective, I think that he was a</p> <p>3 trader at Vinmar.</p> <p>4 Q. All right. He worked at Vinmar?</p> <p>5 A. He worked at Vinmar.</p> <p>6 Q. You're not sure whether he was a trader, but</p> <p>7 you think he was?</p> <p>8 A. He was having commercial responsibilities.</p> <p>9 Q. Okay. What does that mean to you?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Well, I think you said earlier that you</p> <p>12 believed that Rick Wilson was a trader. Is that</p> <p>13 correct?</p> <p>14 A. Yes, I said that.</p> <p>15 Q. Was Rick Wilson located -- when he worked at</p> <p>16 Vinmar, was Rick Wilson located in the same office where</p> <p>17 you were?</p> <p>18 A. As a job perspective?</p> <p>19 Q. Well, is that where he -- well, did he work in</p> <p>20 the same office where you worked?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are you aware that a dispute has arisen</p> <p>23 between Tricon and Vinmar regarding a sale of mixed</p> <p>24 xylenes that occurred in July of 2008?</p> <p>25 A. Can you repeat that?</p>
<p style="text-align: right;">349</p> <p>1 Q. Okay. What master's degree is that?</p> <p>2 A. Master's of Business Administration.</p> <p>3 Q. Okay. And when did you get that degree?</p> <p>4 A. In 2009.</p> <p>5 Q. Okay. Are you currently employed by Vinmar?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How long have you worked for Vinmar?</p> <p>8 A. Starting end of January 2006.</p> <p>9 Q. And when you went to work for Vinmar, what did</p> <p>10 you do for them?</p> <p>11 A. What is my position?</p> <p>12 Q. Well, what is your position at Vinmar today?</p> <p>13 A. Supply chain specialist.</p> <p>14 Q. How long have you worked at Vinmar as a supply</p> <p>15 chain specialist?</p> <p>16 A. From end of January 2006.</p> <p>17 Q. So that's the only job you have had at Vinmar?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember when Rick Wilson was a trader</p> <p>20 at Vinmar? Rick Wilson?</p> <p>21 A. Do I remember if when --</p> <p>22 Q. Do you remember him?</p> <p>23 A. I do remember him.</p> <p>24 Q. Okay. And He was a trader at Vinmar?</p> <p>25 A. I don't know his position. He -- he -- I</p>	<p style="text-align: right;">351</p> <p>1 Q. Are you --</p> <p>2 A. Sorry.</p> <p>3 Q. Are you aware that there is a dispute between</p> <p>4 Tricon and Vinmar about a transaction involving mixed</p> <p>5 xylenes in July of 2008?</p> <p>6 A. I'm aware that I have entered data for a</p> <p>7 business in 2008 about mixed xylene and the entity was</p> <p>8 Tricon. I'm not sure whether there is a dispute or not.</p> <p>9 Q. Mr. Pascu, if you would please look at the</p> <p>10 document that has been marked as Exhibit 29, which</p> <p>11 appears to be, if you'll look at the top, an e-mail sent</p> <p>12 by Rick Wilson to you.</p> <p>13 A. Okay.</p> <p>14 Q. And I think it says, "Laurentiu, I bought MX</p> <p>15 from Tricon. Please contact them and make the necessary</p> <p>16 arrangements. Rick."</p> <p>17 Did I read that correctly, sir?</p> <p>18 A. This phrase is saying what you read, yes.</p> <p>19 Q. Do you remember getting this e-mail from</p> <p>20 Mr. Wilson?</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand that MX refers to mixed</p> <p>23 xylenes?</p> <p>24 A. Yes.</p> <p>25 Q. And is this the -- is this the first time that</p>

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<p style="text-align: right;">352</p> <p>1 you became involved in this -- with these mixed xylenes</p> <p>2 that Mr. Wilson bought from Tricon? Is this when you</p> <p>3 first heard about it?</p> <p>4 A. Might have been, yes.</p> <p>5 Q. You say it might have been. Might you have</p> <p>6 heard about it before?</p> <p>7 A. I don't think that I've heard about it before,</p> <p>8 but it was two years ago so --</p> <p>9 Q. Okay. If you had heard about it before, how</p> <p>10 would you have heard about it before?</p> <p>11 A. By e-mail, phone or person-in-person.</p> <p>12 Q. Well, this is the only e-mail like this that I</p> <p>13 have seen. Is it your -- well, let me put it this way.</p> <p>14 Is it your testimony that the best that</p> <p>15 you can remember today, this is the first time you heard</p> <p>16 about this transaction?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Is this the typical way that you were</p> <p>19 told about transactions for which data needed to be</p> <p>20 entered?</p> <p>21 A. It is not unusual.</p> <p>22 Q. Okay. And when he says "make the necessary</p> <p>23 arrangements," what does Mr. Wilson mean by that?</p> <p>24 A. I don't know. From my perspective as a</p> <p>25 logistic person, it is to get the data entered into the</p>	<p style="text-align: right;">354</p> <p>1 A. Correct.</p> <p>2 Q. Payment terms?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. But besides these are datas required for a</p> <p>6 purchase order as the system is calling to be entered.</p> <p>7 Q. Okay. Excuse me. Can you repeat that?</p> <p>8 A. Besides the terms that you have mentioned --</p> <p>9 Q. Yes.</p> <p>10 A. -- there are other datas that the system</p> <p>11 requires to be entered.</p> <p>12 Q. Okay. And what would that be?</p> <p>13 A. There are -- there are many.</p> <p>14 Q. Give me some of them.</p> <p>15 A. It is the -- it is called seller into the</p> <p>16 system, if we are buying.</p> <p>17 Q. So the name of the seller?</p> <p>18 A. Right.</p> <p>19 Q. Or for the name of the buyer, if you are</p> <p>20 selling?</p> <p>21 A. If -- so if I'm entering the purchase</p> <p>22 confirmation, it's -- the name of the seller is a</p> <p>23 requirement is the company -- is the -- so the company</p> <p>24 that is --</p> <p>25 Q. Okay. And did you understand that in this</p>
<p style="text-align: right;">353</p> <p>1 system, making sure that the ship or the shipment gets</p> <p>2 arranged, and all the necessary, like the inspection,</p> <p>3 payment terms were -- all the items are in place for</p> <p>4 this shipment to go.</p> <p>5 Q. Okay. Is that what you understand by "the</p> <p>6 necessary arrangements"?</p> <p>7 A. From my point of view as a logistic</p> <p>8 dispatching specialist, yeah.</p> <p>9 Q. And that is entering the data in the ERB</p> <p>10 system?</p> <p>11 A. Correct, into SAP. Let's put it SAP.</p> <p>12 Q. Okay.</p> <p>13 A. It's called SAP.</p> <p>14 Q. Okay. And that would include price?</p> <p>15 A. Any data that is required by the system,</p> <p>16 correct.</p> <p>17 Q. And that data would include price?</p> <p>18 A. Among the multiple data is the price.</p> <p>19 Q. Okay. It would also include quantity?</p> <p>20 A. The quantity, correct.</p> <p>21 Q. Would it include date of delivery?</p> <p>22 A. Correct.</p> <p>23 Q. Quality of the material?</p> <p>24 A. Correct.</p> <p>25 Q. Payment method?</p>	<p style="text-align: right;">355</p> <p>1 case Mr. Wilson was telling you about a transaction</p> <p>2 where Tricon -- Vinmar would be buying?</p> <p>3 A. In this one, I understand that there is going</p> <p>4 to be a shipment of MX from Tricon to Vinmar.</p> <p>5 Q. Okay. Tricon is the seller; Vinmar is the</p> <p>6 buyer?</p> <p>7 A. That we are going to have a shipment from</p> <p>8 Tricon of MX --</p> <p>9 Q. Okay.</p> <p>10 A. -- to Vinmar.</p> <p>11 Q. And did you understand that Mr. Wilson was</p> <p>12 telling you that Tricon would be the seller and Vinmar</p> <p>13 would be the buyer?</p> <p>14 A. For that, yes, as the process system.</p> <p>15 Q. In this transaction?</p> <p>16 A. As the process system, yes.</p> <p>17 Q. Now, if you would turn to the second page of</p> <p>18 Exhibit 29, Mr. Pascu, this document -- these documents</p> <p>19 were produced to us by Vinmar in this order. And my</p> <p>20 question to you is, did you receive the documents that</p> <p>21 follow the first page of Exhibit 29 as an attachment to</p> <p>22 the e-mail that is the first page?</p> <p>23 A. Should have been.</p> <p>24 Q. Okay. You believe that you received all of</p> <p>25 these documents together?</p>

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<p style="text-align: right;">356</p> <p>1 A. Yes.</p> <p>2 Q. Mr. Pascu, can you tell me what Exhibit No. 30</p> <p>3 is?</p> <p>4 A. This is a view of our SAP data entry.</p> <p>5 Q. Okay. Did you enter the data that is in this</p> <p>6 document?</p> <p>7 A. I don't remember at that point of time. I</p> <p>8 think that might not have been me, but I don't remember.</p> <p>9 Q. Okay. But if you look at the very top where</p> <p>10 it says "Standard PO 4529980, created by Laurentiu"?</p> <p>11 A. Right.</p> <p>12 Q. Is that you when it is referring --</p> <p>13 A. Correct.</p> <p>14 Q. -- to Laurentiu?</p> <p>15 A. Correct.</p> <p>16 Q. So this says that this document is created by</p> <p>17 you?</p> <p>18 A. Okay. The initial input -- I'm not sure how</p> <p>19 this system works, but most likely the initial input at</p> <p>20 the time that the PO was created initially was created</p> <p>21 by me.</p> <p>22 Q. Well, I'm asking you just about what we see in</p> <p>23 this document, Exhibit 30 that you have in front of you.</p> <p>24 Did you enter this data in the system?</p> <p>25 A. If this is correct, "Created by Laurentiu,"</p>	<p style="text-align: right;">358</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. You said Mr. Anaya was a commercial</p> <p>3 trainee, but you don't know what that means?</p> <p>4 A. He was introduced to me as commercial trainee.</p> <p>5 I don't know what that means.</p> <p>6 Q. Okay. Did you work with Mr. Anaya?</p> <p>7 A. Right.</p> <p>8 Q. What work did you and Mr. Anaya do together?</p> <p>9 A. At this point of time, he was getting the</p> <p>10 logistic training. As a part of that logistic training,</p> <p>11 he was working under my supervision to get the logistic</p> <p>12 of the shipment going on.</p> <p>13 Q. So you were showing him how to do the</p> <p>14 logistical side of the business?</p> <p>15 A. Correct.</p> <p>16 Q. And with that work, you would give him certain</p> <p>17 assignments to do and then you would see how he did</p> <p>18 them? You would supervise his work?</p> <p>19 A. I would supervise his logistic work, yes.</p> <p>20 Q. Mr. Pascu, if you would look at Exhibit 31.</p> <p>21 Let's start from the bottom of the document going up.</p> <p>22 And at the bottom, does that appear to be an e-mail from</p> <p>23 Mr. Anaya to Mr. Wilson and you and Ana Campos?</p> <p>24 A. You are asking me whether this e-mail is</p> <p>25 addressed to me?</p>
<p style="text-align: right;">357</p> <p>1 I have entered the initial data, correct.</p> <p>2 Q. Okay. Do you have any reason to think anybody</p> <p>3 changed it after it was first entered by you?</p> <p>4 A. I don't remember. Should not be.</p> <p>5 Q. Would it be fair to say that in Exhibit 29,</p> <p>6 this document, Mr. Wilson was giving you the attachment</p> <p>7 so that you would know what data needed to be entered</p> <p>8 and what arrangements needed to be made?</p> <p>9 A. As a supply chain specialist, whenever I am</p> <p>10 receiving a document, and as we see here, I would start</p> <p>11 the necessary arrangements, which is including the data,</p> <p>12 so most likely it would have been that I seen this</p> <p>13 document and I have entered the data in SAP.</p> <p>14 Q. Okay. Would Mr. Wilson tell you that he had</p> <p>15 bought MX from Tricon if he had not?</p> <p>16 A. I don't know.</p> <p>17 Q. Mr. Pascu, who is Eduardo Anaya?</p> <p>18 A. At that time, he was a commercial trainee.</p> <p>19 Q. And by "the time," you mean in July of 2008?</p> <p>20 A. At the time of July 24th, 2008.</p> <p>21 Q. Commercial trainee?</p> <p>22 A. He was at that time a commercial trainee, but</p> <p>23 he was in his period of getting the logistic training as</p> <p>24 part of this part of training.</p> <p>25 Q. Okay. Tell me, what is a commercial trainee?</p>	<p style="text-align: right;">359</p> <p>1 Q. Well, yes. Is it addressed to you and Ms. --</p> <p>2 well, is it -- let me put it this way.</p> <p>3 At the bottom, does that appear to you to</p> <p>4 be an e-mail from Eduardo Anaya that is addressed to</p> <p>5 Mr. Wilson, to you and to Ana Campos?</p> <p>6 A. Correct.</p> <p>7 Q. Do you remember receiving this e-mail?</p> <p>8 A. Should have been.</p> <p>9 Q. Okay. By the way, who is Ana Campos?</p> <p>10 A. Is -- she is our logistic -- I don't know the</p> <p>11 exact function that she -- but she is working with me</p> <p>12 for this project, logistic duties.</p> <p>13 Q. Okay. Is she your superior or somebody who</p> <p>14 works under you or at the same level?</p> <p>15 A. I think that we are on the same level, but she</p> <p>16 is still under my supervision.</p> <p>17 Q. So Ms. Campos is under your supervision?</p> <p>18 A. Yes.</p> <p>19 Q. In this e-mail, at the bottom is dated also</p> <p>20 July 24th at 4:03 in the afternoon.</p> <p>21 A. Okay.</p> <p>22 Q. Is that correct?</p> <p>23 A. It seems that it was transmitted, was recorded</p> <p>24 as 4:03 in the afternoon.</p> <p>25 Q. Okay. So it is in the same day as Exhibit 29,</p>

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<p style="text-align: right;">360</p> <p>1 but while Exhibit 29 is at 10:15 in the morning, 2 Exhibit 31 is about 4:00 in the afternoon? 3 A. Seems to be recording July 24th. 4 Q. Okay. Did you instruct Mr. Anaya to get in 5 touch with Mr. Wilson to get information? 6 A. I don't remember, but most likely. 7 Q. Okay. And Mr. Anaya tells Mr. Wilson, "Rick, 8 I will do the follow-up from the logistics point of view 9 of this operation." 10 Did you give Mr. Anaya that assignment, to 11 do the follow-up from the logistics -- 12 A. Yes. 13 Q. -- point of view of this operation? 14 And then he says, "To complete the order, 15 we just need the port of origin of this product." Do 16 you see where it says that? 17 A. Yes. 18 Q. Is that information that would be entered into 19 this ERB or SAP system we've talked about? 20 A. It is -- the port of origin is required for 21 our arrangements for the shipments. 22 Q. Okay. And if you will look at the note, the 23 next note above, which appears to be a note from 24 Mr. Wilson addressed to Mr. Anaya and to you and to 25 Ms. Campos.</p>	<p style="text-align: right;">362</p> <p>1 A. Okay. 2 Q. "Most likely USG"? 3 A. Okay. 4 Q. Do you remember getting that? 5 A. I should have got this e-mail. 6 Q. So just to be clear, Exhibits 30, 33 and 32 7 are all different parts of the same document that would 8 appear on your computer screen? 9 A. Yes, sir. 10 Q. That -- and in order to see the entire 11 document, you would have to scroll from left to right on 12 your computer screen? 13 A. This screen, yes. 14 Q. Am I correct? 15 A. Yes. 16 Q. And the image that you would see on the 17 left-hand side of your computer screen would be 18 Exhibit 30. Correct? 19 A. This would be the first screen. 20 Q. Okay. 21 A. And then you have to roll -- scroll to get to 22 the 32 and 33. 23 Q. All right. So Exhibit 30 would be on the 24 left-hand side of your computer screen. And then as you 25 scroll to the right, you would first see Exhibit 32 and</p>
<p style="text-align: right;">361</p> <p>1 A. Okay. 2 Q. And it appears to be a reply to the e-mail 3 from Mr. Anaya that we were just talking about. 4 Correct? 5 A. Correct. 6 Q. Dated on July 25 at 10:33 in the morning, the 7 next morning, after the e-mail at the bottom of 8 Exhibit 31. Correct? 9 A. Correct. 10 Q. And all -- and all of these are referring 11 PO 459980, which is the same PO referred to in 12 Exhibit 30. Correct? 13 A. Correct. 14 Q. So all of this appears to be relating to the 15 sale by Tricon to Vinmar. Would that be correct? 16 A. It appears to be related to this purchase 17 confirmation. 18 Q. Okay. And Mr. Wilson says to -- well, first, 19 do you remember receiving this e-mail from Mr. Wilson, 20 the one from July 25th, 2008, at 10:33 a.m.? 21 A. I should have -- 22 Q. Okay. 23 A. -- received it. 24 Q. Okay. And he tells Mr. Anaya, "Re: Origin, We 25 won't know until we declare discharge port."</p>	<p style="text-align: right;">363</p> <p>1 eventually you would get to Exhibit 33? 2 A. Correct. 3 Q. Is there anything in Exhibits 30, 32 or 33 4 that indicate the origin of the product? 5 A. It shows here. 6 Q. Yes. In this document -- 7 A. In these documents? 8 Q. In these documents, is there anything that 9 indicates the origin of the product? 10 A. In these three papers? 11 Q. In these three papers. 12 A. Nothing. 13 Q. Mr. Pascu, where did you get the information 14 that you would input into Exhibits 30, 32 and 33? 15 A. Might have been from these (indicating). 16 Q. Exhibit 29? 17 A. Paperwork, yes. 18 Q. Would it have come from Rick Wilson in any 19 case? 20 A. Might have been from this paperwork. 21 Q. Would the information that was put into things 22 like Exhibits 32, 33 and -- Exhibits 30, 32 and 33 23 generally come from the trader? 24 A. Correct. 25 Q. And in this transaction, Mr. Wilson was the</p>

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<p style="text-align: right;">364</p> <p>1 trader?</p> <p>2 A. In my perspective, yes.</p> <p>3 Q. Mr. Pascu, have you seen Exhibit 34 before</p> <p>4 today?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What is Exhibit 34?</p> <p>7 A. It is a purchase confirmation.</p> <p>8 Q. Okay. And it relates to PO No. 4529980.</p> <p>9 Right?</p> <p>10 A. Correct.</p> <p>11 Q. Which we have established is the purchase</p> <p>12 order for the transaction between Tricon and Vinmar that</p> <p>13 we're here about. Correct?</p> <p>14 A. It is the data as entered as -- in the SAP for</p> <p>15 the purchase confirmation.</p> <p>16 Q. Did you prepare Exhibit 34?</p> <p>17 A. I don't remember.</p> <p>18 Q. How was Exhibit No. 34 or documents like --</p> <p>19 how are Vinmar's purchase order confirmations prepared?</p> <p>20 A. What do you mean?</p> <p>21 Q. Well, generally, how are they prepared?</p> <p>22 A. Data is entered in this case.</p> <p>23 Q. And that automatically generates a purchase</p> <p>24 order confirmation?</p> <p>25 A. Upon printing this document.</p>	<p style="text-align: right;">366</p> <p>1 A. It was the document that was generated based</p> <p>2 on the input on the exhibit.</p> <p>3 Q. For this transaction?</p> <p>4 A. Basis of the input that Rick Wilson has</p> <p>5 provided to us.</p> <p>6 Q. Well, my question is, Exhibits 29 and 34</p> <p>7 relate to the same transaction?</p> <p>8 A. I don't know. I'm saying that the data</p> <p>9 entered into SAP relates to the attachment that Rick</p> <p>10 Wilson has sent to us and was processed through SAP.</p> <p>11 This is what I know.</p> <p>12 Q. And the attachment that Rick Wilson sent to</p> <p>13 you is the attachment that is in Exhibit 29. Correct?</p> <p>14 A. Right.</p> <p>15 Q. And Exhibit 34 relates to the attachment that</p> <p>16 is part of Exhibit 29?</p> <p>17 A. It is based on the -- on the input data from</p> <p>18 Exhibit 29.</p> <p>19 Q. 29?</p> <p>20 A. Yes.</p> <p>21 Q. So if -- within Vinmar if you wanted to print</p> <p>22 a PO, what would you do?</p> <p>23 A. You first have to get the approval of the</p> <p>24 trader that that data is correct.</p> <p>25 Q. Okay. And then what do you do?</p>
<p style="text-align: right;">365</p> <p>1 Q. So Exhibit 34 is Vinmar's purchase order</p> <p>2 confirmation for the mixed xylenes that Rick Wilson</p> <p>3 bought that are the subject of the July 24th e-mail to</p> <p>4 you that's Exhibit No. 29?</p> <p>5 A. I know there is a paperwork called purchase</p> <p>6 confirmation that is issued by SAP system whenever we</p> <p>7 press the print button.</p> <p>8 Q. Okay. And you say purchase confirmation, but</p> <p>9 the title of this document actually says Purchase Order</p> <p>10 Confirmation, does it not, sir?</p> <p>11 A. Okay. Sorry.</p> <p>12 Q. Am I right?</p> <p>13 A. We name it as PO.</p> <p>14 Q. Okay.</p> <p>15 A. But the name of the document as shows here</p> <p>16 Purchase Order Confirmation or the data that you are</p> <p>17 referring is named Purchase Order Confirmation.</p> <p>18 Q. Okay. But within Vinmar, this is the document</p> <p>19 that you refer to as your PO?</p> <p>20 A. Correct.</p> <p>21 Q. And what I am asking you -- what I asked you a</p> <p>22 moment ago was whether this PO, Exhibit 34, is the PO</p> <p>23 that was generated in connection with the transaction</p> <p>24 where Rick Wilson bought MX from Tricon that he informed</p> <p>25 you about in Exhibit 29?</p>	<p style="text-align: right;">367</p> <p>1 A. We send these for his review and approval.</p> <p>2 Q. Well, physically what do you do? Is there</p> <p>3 some buttons in your computer that you have to push to</p> <p>4 print a PO?</p> <p>5 A. Yes, you have to push a button.</p> <p>6 Q. That says like "Print PO" or something like</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And before you do that, you have to get</p> <p>10 approval from the trader that the information is</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it is the practice of Vinmar not to print</p> <p>14 a purchase order until the logistics people confirm with</p> <p>15 the trader that the information is correct?</p> <p>16 A. I would say yes.</p> <p>17 MR. LEE: May I have --</p> <p>18 Q. Would you --</p> <p>19 MR. LEE: -- one moment to --</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) If you would take a</p> <p>21 look at --</p> <p>22 (Playback of videotaped was stopped at</p> <p>23 this time.)</p> <p>24 MR. LEE: I just want to make an offer of</p> <p>25 optional completeness at this point. There was a skip.</p>

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<p style="text-align: right;">368</p> <p>1 And if -- for the record, I think to understand the</p> <p>2 testimony, it's helpful just on Page 52 of Mr. Pascu's</p> <p>3 deposition at Line 19 through Line 25, that little</p> <p>4 section was omitted where the question was, "Was that</p> <p>5 done before Exhibit 34 was printed?"</p> <p>6 Answer: "I don't remember."</p> <p>7 Question: "Okay. You don't remember if</p> <p>8 you printed it?"</p> <p>9 Answer: "I don't remember if I printed</p> <p>10 it, yes, sir."</p> <p>11 Question: "If it was not you who printed</p> <p>12 it, who would have?"</p> <p>13 "Anyone that has access to the</p> <p>14 information."</p> <p>15 JUDGE BENTON: Okay. Very good.</p> <p>16 MR. LEE: Thank you.</p> <p>17 (Playback of videotape was started again</p> <p>18 at this time.)</p> <p>19 Q. (BY MR. DIAZ-ARRASTIA) -- Exhibit 34, like I</p> <p>20 said again -- I think we have already established that</p> <p>21 it relates to PO 4529980?</p> <p>22 A. Correct.</p> <p>23 Q. And the date next to it is July 24, 2008.</p> <p>24 What late -- what date does that refer to?</p> <p>25 A. I don't know. I think that is the date when</p>	<p style="text-align: right;">370</p> <p>1 Q. Okay. If you will look at the bottom --</p> <p>2 A. Okay.</p> <p>3 Q. Well, let me ask you. Is this a standard form</p> <p>4 that Vinmar uses for all its PO's?</p> <p>5 A. As far to my knowledge, yes.</p> <p>6 Q. All right. You've seen a lot of PO's that</p> <p>7 Vinmar has generated, have you not, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And they all look pretty much like</p> <p>10 this? That's their standard form?</p> <p>11 A. For chemical, I would say yes.</p> <p>12 Q. And if you would look at the bottom of Page 2.</p> <p>13 A. Okay.</p> <p>14 Q. You see where it says, "Law and arbitration"?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Well, what I'm trying to figure out,</p> <p>17 sir, it's the language that we find, and let me read it</p> <p>18 for you and please confirm that I've read it correctly.</p> <p>19 It says, "Law and arbitration: Law of the</p> <p>20 State of Texas, USA, to apply. All disputes arising in</p> <p>21 connection with the present contract shall be finally</p> <p>22 settled under the Rules of Conciliation and Arbitration</p> <p>23 of the American Arbitration Association by one or more</p> <p>24 arbitrators appointed in accordance with the said</p> <p>25 rules."</p>
<p style="text-align: right;">369</p> <p>1 the data into SAP was entered and the date where the</p> <p>2 save button was pressed.</p> <p>3 Q. I understand that the docu -- that no one</p> <p>4 actually gets down and writes or types in all of this</p> <p>5 information. It's automatically created by the system?</p> <p>6 A. Okay.</p> <p>7 Q. And when you hit the "Print PO" button, it</p> <p>8 just generates this, depending on what information was</p> <p>9 entered?</p> <p>10 A. Okay.</p> <p>11 Q. Is that all correct?</p> <p>12 A. Yes.</p> <p>13 Q. Fine. Look at the second page of Exhibit 34.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see where there is a line that says</p> <p>16 "Origin"?</p> <p>17 A. Yes.</p> <p>18 Q. And it is blank. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And would that be because no origin was</p> <p>21 entered into the system prior to this being printed?</p> <p>22 A. It would have been that the word here was not</p> <p>23 entered into the system, yes.</p> <p>24 Q. Before this was printed?</p> <p>25 A. Before this was printed.</p>	<p style="text-align: right;">371</p> <p>1 Did I read that correctly, sir?</p> <p>2 A. You read what is -- what is written here, yes.</p> <p>3 Q. Now, Mr. Pascu, if you would look at</p> <p>4 Exhibit 35. And I would call your attention to the</p> <p>5 bottom half of the first page of Exhibit 35.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. And that is an e-mail from you to</p> <p>8 somebody at Tricon Energy whose address is</p> <p>9 vuk@triconenergy.com. Is that correct, sir?</p> <p>10 A. It appears to be, yes.</p> <p>11 Q. Okay. I believe that gentleman is Vuk</p> <p>12 Rajevac. Are you familiar with that name?</p> <p>13 A. I think that -- yes.</p> <p>14 Q. Okay. And it's an e-mail dated July 29th,</p> <p>15 2008, which you are sending at 4:08?</p> <p>16 A. It seems to be this way.</p> <p>17 Q. Okay. And it says, "Dear Vuk, Please find</p> <p>18 enclosed our comments on your sale confirmation. We</p> <p>19 shall revert soon with our purchase order for your</p> <p>20 review." Did I read that correctly, sir?</p> <p>21 A. You stated this way, yes.</p> <p>22 Q. Now, if you would turn a couple of pages, the</p> <p>23 page at the bottom says VIN 5. Do you see that, sir?</p> <p>24 A. VIN 00 --</p> <p>25 Q. Several zeroes and 5.</p>

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<p style="text-align: right;">372</p> <p>1 A. Okay.</p> <p>2 Q. Okay. That is the -- what you are enclosing</p> <p>3 on the e-mail to Mr. Rajevac, is it not, to Vuk?</p> <p>4 A. Whatever this document it is here --</p> <p>5 Q. It says you are enclosing and sending to Vuk?</p> <p>6 A. I know that I have attached document. It</p> <p>7 seems like it could be this one. Now, but you are</p> <p>8 asking me this one. I don't know.</p> <p>9 Q. Okay. If you would compare, sir, this</p> <p>10 document, beginning on Page VIN 5, to the document that</p> <p>11 is on the second page of Exhibit 29.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. And, in particular, if you will look at</p> <p>14 the top of both documents where there is a fax line.</p> <p>15 A. Okay.</p> <p>16 Q. They both say, "July 23, 2008, 10:53 a.m.,</p> <p>17 Tricon Energy, 713-963-9030."</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And does it appear that except for some</p> <p>20 handwriting that there is an Exhibit 35 -- the</p> <p>21 attachment to Exhibit 35 and the attachment to</p> <p>22 Exhibit 29 are the same document?</p> <p>23 A. Now, without checking line by line, it seems</p> <p>24 that it could be the same document, yes.</p> <p>25 Q. Okay. Do you think they are the same</p>	<p style="text-align: right;">374</p> <p>1 A. Yes.</p> <p>2 Q. Okay. But the numbers that appear on the top</p> <p>3 right-hand corner you think are not yours?</p> <p>4 A. I think they are not mine.</p> <p>5 Q. Do you know whose handwriting that is?</p> <p>6 A. No.</p> <p>7 Q. Okay. The numbers on the top right-hand</p> <p>8 corner are 4529980. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. Which is the same as the PO number that we</p> <p>11 have been looking at?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And you also think that the numbers on</p> <p>14 the lower left-hand corner are not yours?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And do you know whose handwriting that</p> <p>17 is?</p> <p>18 A. No.</p> <p>19 Q. If you will look under the credit terms.</p> <p>20 A. Okay.</p> <p>21 Q. It's a little hard to see, but there is some</p> <p>22 words that were scratched out. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did you do that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">373</p> <p>1 document?</p> <p>2 A. If you allow me to check line by line.</p> <p>3 Q. Sure. Go ahead.</p> <p>4 A. Then it appears to be the same document.</p> <p>5 However, I'm not yet in my state of mind to check each</p> <p>6 line to make sure, but it seems to be the same document,</p> <p>7 yes.</p> <p>8 Q. Okay. You don't have any reason to think they</p> <p>9 are different documents?</p> <p>10 A. I would -- I would not have reason.</p> <p>11 Q. Okay. Do you recognize the handwriting that</p> <p>12 is on Exhibit 35 -- on the attachment on Exhibit 35?</p> <p>13 A. Yes.</p> <p>14 Q. Is it yours?</p> <p>15 A. I recognize that this modification, this</p> <p>16 handwriting here is mine.</p> <p>17 Q. Okay.</p> <p>18 A. That this one -- the top one and the bottom</p> <p>19 one are not mine. And on the second page, seems that it</p> <p>20 is mine, mine and yes.</p> <p>21 Q. Okay. Just to make the record clear, on the</p> <p>22 first page some writing that is on the left margin of</p> <p>23 the document that says, "Arrival at destination" --</p> <p>24 A. Okay.</p> <p>25 Q. -- you believe that is your handwriting?</p>	<p style="text-align: right;">375</p> <p>1 Q. Then on the second page under No. 2,</p> <p>2 Demurrage, there is the word -- someone wrote in "Time</p> <p>3 bar is 60 days."</p> <p>4 A. Correct.</p> <p>5 Q. Is that your handwriting?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Under 7, Transfer of Title and Risk, it</p> <p>8 says, "As per Incoterms 2000." Is that your</p> <p>9 handwriting?</p> <p>10 A. Correct, yes.</p> <p>11 Q. Okay. And, again, there are on paragraphs --</p> <p>12 on Page 2 of the document, which is VIN No. 6, there are</p> <p>13 checkmarks by Paragraphs 1, 2, 3, 4 and 5. Correct?</p> <p>14 A. I can see those checkmarks, yes.</p> <p>15 Q. Are those yours?</p> <p>16 A. Seems to be, yes.</p> <p>17 Q. Okay. And on 7 and 7-A there again is some</p> <p>18 language that has been crossed out. Do you see that,</p> <p>19 sir?</p> <p>20 A. Yes, I do see.</p> <p>21 Q. Did you do that?</p> <p>22 A. I might have done, yes.</p> <p>23 Q. Okay. Does that look like your mark?</p> <p>24 A. Yes.</p> <p>25 Q. And I think that is all the handwriting on the</p>

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<p style="text-align: right;">376</p> <p>1 document. Is that correct?</p> <p>2 A. Yes, seems to be.</p> <p>3 Q. Okay. So -- are the -- is the handwriting</p> <p>4 that we have been looking at, is that what you referred</p> <p>5 to as your comments on the sale confirmation?</p> <p>6 A. Correct.</p> <p>7 Q. But my question, sir, was, if you didn't</p> <p>8 scratch anything out, if you didn't make a</p> <p>9 Mark, if you didn't write anything, that meant that you</p> <p>10 had no comment about that. Is that so?</p> <p>11 A. As the ones mentioned before, on all the other</p> <p>12 ones I did not have any comment from a logistic point of</p> <p>13 view.</p> <p>14 Q. Okay. All right. And you sent this to Vuk at</p> <p>15 Tricon on July 29th at 4:08 in the afternoon. Correct?</p> <p>16 A. Seems to be, yes.</p> <p>17 Q. Okay, Mr. Pascu, let's take a look now at</p> <p>18 Exhibit 36.</p> <p>19 A. Okay.</p> <p>20 Q. It appears to be an e-mail from you to Rick</p> <p>21 Wilson. Is that correct, sir?</p> <p>22 A. It appears to be, yes.</p> <p>23 Q. And it's dated July 29th, 2008, at 11:54 a.m.?</p> <p>24 A. Okay.</p> <p>25 Q. And the subject is PO 4529980, 5,000 metric</p>	<p style="text-align: right;">378</p> <p>1 Q. Yeah. Do your comments in Exhibit 35 say</p> <p>2 anything about the origin of the MX?</p> <p>3 A. My comments are referring strictly to a</p> <p>4 shipment.</p> <p>5 Q. Okay. Do they say anything about the origin</p> <p>6 of the MX?</p> <p>7 A. My comments do not say anything about the</p> <p>8 origin.</p> <p>9 Q. Okay. Going back to Exhibit 36, if you will</p> <p>10 look right before the sign-off on your e-mail to</p> <p>11 Mr. Wilson, it says, "If you have a right contact person</p> <p>12 would be great. I can make contact and discuss. Thank</p> <p>13 you."</p> <p>14 A. Okay.</p> <p>15 Q. You are asking Mr. Wilson to tell you who the</p> <p>16 contact person at Tricon should be?</p> <p>17 A. Logistic person, yes.</p> <p>18 Q. Yeah. And that would have been Mr. Rajevac?</p> <p>19 A. I have been told that Mr. Rajevac is going to</p> <p>20 handle the logistics.</p> <p>21 Q. Okay. So did Mr. Wilson tell you that you</p> <p>22 should be contacting Vuk Rajevac?</p> <p>23 A. I don't remember whether it was Rick or -- but</p> <p>24 it might have been Rick. I don't remember how I got to</p> <p>25 know that Mr. Rajevac is the logistics person.</p>
<p style="text-align: right;">377</p> <p>1 tons of MX. Correct?</p> <p>2 A. Correct.</p> <p>3 Q. That is, by the way, the same subject line as</p> <p>4 you used in Exhibit 34, the e-mail to mister to -- Vuk</p> <p>5 Rajevac. Correct?</p> <p>6 A. You are asking me whether the same subject --</p> <p>7 Q. Same subject line?</p> <p>8 A. -- line as -- okay. Yes.</p> <p>9 Q. Okay. And you tell Mr. Wilson, "Please find</p> <p>10 my comments on this sale contract." Correct?</p> <p>11 A. Correct. It's written this way, yes.</p> <p>12 Q. Yes. It appears to me that what you are</p> <p>13 sending Mr. Wilson with your e-mail at -- on July 29th,</p> <p>14 2008, at 11:54 is what you also sent Mr. Rajevac later</p> <p>15 in that day, is that correct, your comments on this</p> <p>16 sales contract?</p> <p>17 A. It appears to be, yes.</p> <p>18 Q. Okay. So just before noon on July 29th, you</p> <p>19 had shown Mr. Wilson the comments that you later gave to</p> <p>20 Vuk Rajevac at 4:00 in the afternoon the same day?</p> <p>21 A. Appears to be, yes.</p> <p>22 Q. Now, in your comments on Exhibit 35, is there</p> <p>23 anything in there that talks about the origin of the</p> <p>24 product or the material?</p> <p>25 A. You are asking me whether this document is --</p>	<p style="text-align: right;">379</p> <p>1 Q. But somebody had to tell you that?</p> <p>2 A. Right.</p> <p>3 Q. Okay. And so somebody had to respond to your</p> <p>4 e-mail at 11:54 a.m. -- that's Exhibit 36 -- to tell</p> <p>5 you, "Contact Vuk Rajevac"?</p> <p>6 A. There is a way that I got information that Vuk</p> <p>7 is the logistics person, yes, you are correct.</p> <p>8 Q. You don't remember how?</p> <p>9 A. I don't remember how.</p> <p>10 Q. But somebody had to give you that information?</p> <p>11 A. Somebody gave me that information.</p> <p>12 Q. And somebody gave you that information after</p> <p>13 you sent Exhibit 36?</p> <p>14 A. Appears to be, yes.</p> <p>15 Q. Because you need to send it to Mr. Rajevac at</p> <p>16 4:00 that afternoon?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. If you would look now, Mr. Pascu, at</p> <p>19 Exhibit No. 37. And, again, I would call your attention</p> <p>20 to the bottom half of the first page --</p> <p>21 A. Okay.</p> <p>22 Q. -- which appears to be an e-mail from Vuk</p> <p>23 Rajevac to you. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. Dated July 29th, 2008, at 4:43 p.m.?</p>

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<p style="text-align: right;">380</p> <p>1 A. Appears to be recorded this way, yes.</p> <p>2 Q. It's about -- oh, just a little over a</p> <p>3 half-hour after you sent him Exhibit 35. Correct?</p> <p>4 A. Seems to be this way, yes.</p> <p>5 Q. And the subject line is the same as in</p> <p>6 Exhibit 35 and in Exhibit 36. Correct?</p> <p>7 A. Seems to be, yes.</p> <p>8 Q. Re: PO 4529980, 5,000 metric tons of MX.</p> <p>9 Correct?</p> <p>10 A. Appears to be, yes.</p> <p>11 Q. Okay. And it says, "Hi Laurentiu, to answer</p> <p>12 your questions: No. 1, your comments on the contract</p> <p>13 well noted and accepted except for demurrage time bar,</p> <p>14 which is 90 days as per industrywide standard."</p> <p>15 Did I read that correctly, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Did you understand that to mean that</p> <p>18 Mr. Rajevac was agreeing to all of your comments except</p> <p>19 for the demurrage time bar period?</p> <p>20 A. I don't know what he meant. I'm not Vuk to</p> <p>21 state this.</p> <p>22 Q. Do you have an understanding of what it means</p> <p>23 when somebody says, "Your comments on the contract well</p> <p>24 noted and accepted"?</p> <p>25 A. No, I don't.</p>	<p style="text-align: right;">382</p> <p>1 telling you? "We will know origin when discharge port</p> <p>2 is discharged (sic)"?</p> <p>3 Aren't Mr. Rajevac and Mr. Wilson saying</p> <p>4 the same thing?</p> <p>5 A. Now, again, you are asking me to comment on</p> <p>6 something that I'm not involved with again. And,</p> <p>7 therefore, I would be cautious in understanding your</p> <p>8 question. But you are asking me -- let me put it this</p> <p>9 way.</p> <p>10 You are asking me whether Rick has</p> <p>11 answered to Eduardo's and my message, and I can tell you</p> <p>12 it appears to be, yes. Eduardo and I have asked Rick</p> <p>13 Wilson, "What is the port of origin?"</p> <p>14 And he asked -- "I don't know. Most</p> <p>15 likely it is going to be US Gulf Coast."</p> <p>16 Q. Okay. Before July 29th, the date of</p> <p>17 Exhibits 35, 36 and 37, before that date, did anyone</p> <p>18 ever tell you that Vinmar had to have MX of U.S. origin?</p> <p>19 A. Tell me again. I'm sorry.</p> <p>20 Q. Before July 29th, 2008, did anyone ever tell</p> <p>21 you that the MX that Vinmar was buying from Tricon had</p> <p>22 to be of U.S. origin?</p> <p>23 A. As mentioned, as a supply chain specialist, we</p> <p>24 are handling the data that is provided by the commercial</p> <p>25 person. We have entered the data and the data is --</p>
<p style="text-align: right;">381</p> <p>1 Q. Okay. You received Exhibit 37, didn't you,</p> <p>2 sir?</p> <p>3 A. Appears to be, yes.</p> <p>4 Q. Let's look at the item that is numbered 3 --</p> <p>5 A. Okay.</p> <p>6 Q. -- on Exhibit 37 near the bottom of the page.</p> <p>7 A. Okay.</p> <p>8 Q. And Mr. Rajevac tells you, "As far as the</p> <p>9 shipment details, we sold on CFR basis with arrival</p> <p>10 window. So once you declare the discharge port, by</p> <p>11 August 8, we will be able to decide whether to give you</p> <p>12 a deep sea cargo, which at that point will most likely</p> <p>13 already be on the water, or an Asian origin cargo."</p> <p>14 Did I read that correctly, sir?</p> <p>15 A. You read what appears to be here, yes.</p> <p>16 Q. Okay. If you would look at Exhibit 31</p> <p>17 quickly.</p> <p>18 A. 31.</p> <p>19 Q. There you go. Right in the middle of the page</p> <p>20 where Mr. Wilson is responding to Mr. Anaya and you.</p> <p>21 A. Okay.</p> <p>22 Q. He says, "Re: Origin. We won't know until we</p> <p>23 declare discharge port."</p> <p>24 A. Okay.</p> <p>25 Q. Doesn't that mean exactly what Mr. Rajevac is</p>	<p style="text-align: right;">383</p> <p>1 appear exactly what you see here in these -- in this</p> <p>2 (indicating).</p> <p>3 Q. And what we saw is that no data was ever</p> <p>4 entered about the origin of the material?</p> <p>5 A. Right.</p> <p>6 Q. So my question to you is, does that mean that</p> <p>7 no one ever told you that the MX had to be U.S. origin?</p> <p>8 A. Should be the case. Whatever data we get, we</p> <p>9 are inputting it into the system.</p> <p>10 Q. The only thing that you were told about the</p> <p>11 origin of the material is that you would know it once</p> <p>12 the discharge port was declared. Right?</p> <p>13 A. Again, whenever we are inputting, yes, the</p> <p>14 data, we want to make sure that the data is correct.</p> <p>15 We -- most likely, we did not get information about the</p> <p>16 date of origin; therefore, we did not input.</p> <p>17 (This is the end of the playback of the</p> <p>18 edited version of the videotaped deposition of Laurentiu</p> <p>19 Paul Pascu that was originally taken on May 27, 2010.)</p> <p>20 JUDGE BENTON: Okay. Let's take about a</p> <p>21 ten-minute break. With that, we're off the record.</p> <p>22 (Recess from 10:30 a.m. to 10:46 a.m.)</p> <p>23 MR. DIAZ-ARRASTIA: Okay. We're on the</p> <p>24 record. Let's proceed.</p> <p>25 (At this time the edited version of the</p>

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<p>1 videotaped deposition of Richard W. Wilson, Ph.D., that 2 was originally taken on August 30, 2010, was played in 3 the arbitration. The court reporter at the arbitration 4 reported such proceedings and this is her transcription 5 of same.) 6 RICHARD W. WILSON, Ph.D., 7 having been first duly sworn, testified as follows: 8 EXAMINATION 9 BY MR. LEE: 10 Q. Good morning, Dr. Wilson. How are you today? 11 A. Just fine. 12 Q. Good. Would you mind giving us your full 13 name, sir? 14 A. Richard W. Wilson. 15 Q. Okay. And how old are you? 16 A. 51. 17 Q. What is it that you do today? 18 A. I'm the CEO of Cobalt Technologies & Renewable 19 Fuels & Chemicals Business. 20 THE REPORTER: Renewable fuels and what? 21 THE WITNESS: Chemicals Business. 22 Q. (BY MR. LEE) Do you mind telling me just a 23 little bit about what it is that Cobalt Technologies 24 does? 25 A. Well, the companies develop the technology to</p>	<p>1 Q. When were you first employed by Amoco? 2 A. Hired in 1989. And right around the merger 3 time in 19 -- in 2000 -- 1999, 2000, I -- I went into my 4 first trading role. 5 Q. And that was with BP? 6 A. BP. 7 Q. And can you just generally describe what it 8 was that you were responsible for in your trading role 9 at BP? 10 A. My first role was a -- I was -- I was 11 responsible for midback office. Think accounting. 12 Think logistics. And then I went into a trading role. 13 And then I was put in charge of all the trading 14 operations in Australasia for products that came out of 15 BP's refineries or BP's joint ventures. 16 Q. When you served in the trading role, what 17 products were you buying, selling? 18 A. Mostly blended gasolines and diesel fuel. 19 There was -- we did some exporting of blend stocks into 20 the U.S. West Coast. 21 Q. Okay. How long were you in a trading role at 22 BP? 23 A. In trading roles, I went into trading 1999, 24 2000. 25 Q. So from 1999 to about 2001, you were an</p>
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<p>1 make bio fuels and biochemicals out of wood waste. And 2 my role is to commercialize that technology globally. 3 Q. Great. How long have you been the CEO of 4 Cobalt Technologies? 5 A. Two years. 6 Q. And you live here in California? 7 A. Palo Alto, California. 8 Q. Where is Cobalt Technologies headquartered? 9 A. Mountain View, California. 10 Q. I'll ask you a little bit about your 11 background, Dr. Wilson. Where did you grow up? 12 A. I grew up in Philadelphia, Pennsylvania. 13 Q. Where did you go to college? 14 A. Undergrad chemistry degree, UC San Diego, 15 Ph.D. chemical engineering, Lehigh. MBA, University of 16 Chicago. 17 Q. When did you graduate from UC San Diego? 18 A. 1981. 19 Q. And then there was another stop after UC in 20 San Diego? 21 A. Lehigh, Ph.D. chemical engineering, '89. 22 Q. And then what about after that? 23 A. University of Chicago, 1997. 24 Q. Was that an MBA or -- 25 A. MBA.</p>	<p>1 individual trader at BP? 2 A. I first had a responsibility around midback 3 offices. So the way you get into trading is you learn 4 the -- the ebbs and flows of the paperwork. 5 Q. Okay. And after you spent a few months in the 6 back office, then you went into trading. Is that right? 7 A. That's right. 8 Q. And you served in that role until sometime in 9 2001? 10 A. That's right. 11 Q. So approximately two years of sort of 12 individual trading? 13 A. Rating -- supporting individual trading. 14 THE REPORTER: I'm sorry. I didn't hear 15 you. 16 THE WITNESS: Supporting individual 17 trading. 18 Q. (BY MR. LEE) And then after that two-year 19 stint as either logistics or trading, you then -- 20 A. Management. 21 Q. -- went into management. And you had a 22 trading operation that you were managing? 23 A. That's right. 24 Q. How many traders were you responsible for? 25 A. 18.</p>

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<p style="text-align: right;">388</p> <p>1 Q. And was this primarily products in Asia?</p> <p>2 A. In Australasia, so Singapore, New Zealand and</p> <p>3 Australia.</p> <p>4 Q. What were your basic management</p> <p>5 responsibilities?</p> <p>6 A. I was -- I was responsible for P&L. I was</p> <p>7 responsible for control.</p> <p>8 Q. And how long were you in the -- in a</p> <p>9 management role of the trading operation of BP?</p> <p>10 A. Well, I went -- it was circa 2001 into 2003.</p> <p>11 And then at that point I moved back from -- I was in</p> <p>12 Australia at the time. I moved back to the United</p> <p>13 States. I went into the chemicals business.</p> <p>14 My goal there was -- and my remit was to</p> <p>15 bring trading skills to a part of the business that was</p> <p>16 very dominated by technologists. And I was chosen for</p> <p>17 that role because of my technology and my trading</p> <p>18 background.</p> <p>19 Q. Okay. So the -- at least the concept was that</p> <p>20 you would bring your trading skill set over to the</p> <p>21 United States and --</p> <p>22 A. Well, into the chemical business and they were</p> <p>23 a global chemical business.</p> <p>24 Q. Okay. You mentioned you started at Vinmar in</p> <p>25 December of 2006?</p>	<p style="text-align: right;">390</p> <p>1 focused on MX right away because the economics of MX are</p> <p>2 closely tied to gasoline and I had experience in</p> <p>3 understanding the value of gasolines given my experience</p> <p>4 in Australia.</p> <p>5 Q. You said you left in October of 2008. Why did</p> <p>6 you leave Vinmar?</p> <p>7 A. Well, I had an opportunity to run a Silicon</p> <p>8 Valley renewable chemical business as a CEO so I was</p> <p>9 very much attracted to the opportunity to work on</p> <p>10 something that had social impact.</p> <p>11 Q. I want to talk to you about the summer of</p> <p>12 2008. And I guess really to get into this, let me ask</p> <p>13 you, where were you officing in the summer of 2008?</p> <p>14 A. The summer of 2008, I was at the home office</p> <p>15 in Chicago.</p> <p>16 Q. Had that always been the case?</p> <p>17 A. No.</p> <p>18 Q. All right.</p> <p>19 A. I spent a year commuting to Houston.</p> <p>20 Q. So your first year at Vinmar, you --</p> <p>21 A. Commuted.</p> <p>22 Q. -- were in the Houston office but your family</p> <p>23 was in Chicago?</p> <p>24 A. That's right.</p> <p>25 Q. Obviously, Dr. Wilson, I'm here to talk to you</p>
<p style="text-align: right;">389</p> <p>1 A. I think that's right, yeah.</p> <p>2 Q. And how long were you there?</p> <p>3 A. Until October 2008.</p> <p>4 Q. What were you responsible for at Vinmar?</p> <p>5 A. Well, that changed over time. I'd say that it</p> <p>6 was really a business development role. Before -- I</p> <p>7 think before I went into -- before I went into aromatics</p> <p>8 trading or before I had the remit of developing</p> <p>9 aromatics trading, I was actually buying and selling</p> <p>10 enzymes.</p> <p>11 So these are renewable replacements for</p> <p>12 chemicals. And it was a variety of countries, Brazil,</p> <p>13 Turkey, China and leveraged some of the supply resources</p> <p>14 that Vijay Goradia had.</p> <p>15 Q. And then I think you mentioned you were put in</p> <p>16 charge of the aromatics trading?</p> <p>17 A. That's right.</p> <p>18 Q. How did that happen?</p> <p>19 A. It was -- well, the enzyme business didn't</p> <p>20 generate a multimillion dollar P&L fast enough so we</p> <p>21 decided that we would progress aromatics trading. And</p> <p>22 that was, I mean, roughly late 2007.</p> <p>23 Q. And what -- what's included in the aromatics</p> <p>24 family?</p> <p>25 A. Well, it was a remit to do anything. I</p>	<p style="text-align: right;">391</p> <p>1 about a dispute that exists between Tricon and Vinmar.</p> <p>2 And I take it that you're aware that Tricon has sued</p> <p>3 Vinmar over an alleged contract involving the sale of</p> <p>4 MX?</p> <p>5 A. That's right.</p> <p>6 Q. Okay. How were you involved in the events</p> <p>7 leading up to this alleged contract?</p> <p>8 A. I was the trader responsible for the Vinmar</p> <p>9 side of that trade.</p> <p>10 Q. Why were you interested in purchasing MX?</p> <p>11 A. Because I was -- well, first of all, the</p> <p>12 trading that I was attempting to build was based on</p> <p>13 purchasing in the United States and have MX into Asia.</p> <p>14 Particularly, the arrangement I had was that Formosa, a</p> <p>15 Taiwanese company, was frustrated that they were a big</p> <p>16 buyer of MX and the Asian traders -- well, what happens</p> <p>17 is Asia is the suppliers will sell to certain traders</p> <p>18 and those traders essentially will collectively push the</p> <p>19 price up.</p> <p>20 And my trading activity is all about</p> <p>21 essentially breaking the back of that monopoly, and what</p> <p>22 that did was that gave me privileged access to sell</p> <p>23 material to Formosa in Taiwan, buy in the U.S., sell</p> <p>24 to -- sell to Formosa and hopefully expand that to other</p> <p>25 consumers of MX.</p>

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<p style="text-align: right;">392</p> <p>1 Q. Right. And so how was the U.S. origin aspect</p> <p>2 of the MX, how is that essential to doing business with</p> <p>3 Formosa?</p> <p>4 A. Well, Formosa wanted material that didn't</p> <p>5 originate in Asia.</p> <p>6 Q. Do you know why?</p> <p>7 A. Because they wanted to reduce their exposure</p> <p>8 to Asian material so that they weren't subject to the --</p> <p>9 to the dominant -- the dominant supply control of the</p> <p>10 Asian traders.</p> <p>11 Q. Can you tell us why the -- why you approached</p> <p>12 Ed Leyman to assist in the purchase of MX?</p> <p>13 A. Two reasons. The first reason that -- was</p> <p>14 that I recognized that through transacting with Ed I</p> <p>15 would over time get exposure to all the supply sources</p> <p>16 that were available in MX and -- number one.</p> <p>17 So it was essentially an opportunity to</p> <p>18 learn about what's really out there, recognizing that MX</p> <p>19 is used in gasoline and also chemicals so it could</p> <p>20 physically be anywhere.</p> <p>21 The second reason I engaged Ed Leyman is</p> <p>22 that Vinmar's control environment did not include</p> <p>23 recorded tape recordings and Ed Leyman assured me that</p> <p>24 recordings were taped so I saw that as my opportunity to</p> <p>25 have some controlled environment over my activities.</p>	<p style="text-align: right;">394</p> <p>1 A. It was -- at the -- at the time that I was</p> <p>2 originally doing the deal, I -- Formosa actually was</p> <p>3 actively looking for product. So my first hope was that</p> <p>4 I can essentially do a back-to-back transition so --</p> <p>5 transaction so that I buy and sell simultaneously so I</p> <p>6 don't expose myself to market price moves.</p> <p>7 But as the evening in Taiwan played out,</p> <p>8 that was no longer a possibility. It was the end of the</p> <p>9 day. I decided to buy anyway. And the reason I decided</p> <p>10 to buy was that there was particular tightness in the</p> <p>11 United States at least in terms of gasoline blend</p> <p>12 stocks. So I was generally long and there were some</p> <p>13 signs of weakness in Asia.</p> <p>14 Q. Did you have any interest in purchasing open</p> <p>15 origin MX?</p> <p>16 A. No, because I had no place to sell it.</p> <p>17 Q. Were you willing to purchase MX if it wasn't</p> <p>18 of U.S. origin?</p> <p>19 A. No.</p> <p>20 Q. Did you ever authorize Ed Leyman to purchase</p> <p>21 anything but U.S. origin MX?</p> <p>22 A. Not that I remember.</p> <p>23 Q. If you had wanted -- let me ask you this. If</p> <p>24 you had wanted open origin MX, would you have gone to Ed</p> <p>25 Leyman?</p>
<p style="text-align: right;">393</p> <p>1 Q. Why was that important?</p> <p>2 A. Well, so there's no misunderstandings.</p> <p>3 Q. What -- I guess tape-recorded conversation, is</p> <p>4 that something that you had had experience with at BP?</p> <p>5 A. It's BP best practice.</p> <p>6 Q. Was it your understanding that Mr. Leyman</p> <p>7 would function as a neutral broker?</p> <p>8 A. Yes.</p> <p>9 Q. What does that -- what does that mean to you?</p> <p>10 A. That means he'll treat each party the same.</p> <p>11 He will keep me anonymous should I require that.</p> <p>12 Q. And I guess the -- what I want to focus in on</p> <p>13 today is this -- the discussions that you had with</p> <p>14 Mr. Leyman on July the 22nd, 2008. Okay?</p> <p>15 And do you remember that on that day you</p> <p>16 were in the market to purchase MX?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. What did you tell Mr. Leyman about the</p> <p>19 origin of the MX that you wanted to purchase?</p> <p>20 A. I told Ed that I needed U.S. origin material</p> <p>21 and that my customer would only accept U.S. origin</p> <p>22 material.</p> <p>23 Q. And I think you told us earlier about your</p> <p>24 experience with Formosa. Was -- was this intended</p> <p>25 Formosa?</p>	<p style="text-align: right;">395</p> <p>1 A. If I wanted material from Asia, I would not</p> <p>2 have gone to Ed Leyman, no.</p> <p>3 Q. Why?</p> <p>4 A. I would have went to an Asian broker who was</p> <p>5 better aware of what the deal opportunities were so I</p> <p>6 could have got a better price.</p> <p>7 Q. Where was Mr. Leyman located?</p> <p>8 A. I believe New York.</p> <p>9 Q. Do -- does Exhibit 6, does that appear to be</p> <p>10 instant message exchanges between you and Ed Leyman?</p> <p>11 A. Appears to be, yes.</p> <p>12 Q. Having looked at that, does that -- do you</p> <p>13 recall any of these discussions that you had with</p> <p>14 Mr. Leyman on July 22nd, 2008?</p> <p>15 A. Vaguely.</p> <p>16 Q. Okay. Around I guess it's 9:34 a.m.</p> <p>17 Mr. Leyman tells you that he's got a firm offer for 5 KT</p> <p>18 MX FOB H/TC Corpus, 5 KT any August at 4:10, 5211/20 BR.</p> <p>19 Could you tell us what that meant to you?</p> <p>20 A. FOB means that I'm purchasing a parcel that's</p> <p>21 at the port and that port is Houston, Texas City or</p> <p>22 Corpus Christi, all which are in the United States,</p> <p>23 5,000 metric tons. I believe the -- any August refers</p> <p>24 to the shipping date. 4.10 is the price. 5 -- 5211/20</p> <p>25 is the specification.</p>

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<p style="text-align: right;">396</p> <p>1 Q. The -- what is the significance of his</p> <p>2 reference to FOB H/TC or Corpus?</p> <p>3 A. It means that I'm buying material out of</p> <p>4 Houston that originates out of Houston, Texas City or</p> <p>5 Corpus Christi.</p> <p>6 Q. Would you consider that to be U.S. origin</p> <p>7 material?</p> <p>8 A. Yes.</p> <p>9 Q. And was that consistent with your discussions</p> <p>10 with Mr. Leyman?</p> <p>11 A. That's right.</p> <p>12 Q. I'm sorry. What was your understanding on</p> <p>13 July 22nd or at least at this point in time as to that</p> <p>14 Formosa's interest was?</p> <p>15 A. They were -- they were looking to buy.</p> <p>16 Q. If you look down a couple of lines at</p> <p>17 10:00 a.m., Mr. Leyman mentions a second MX seller</p> <p>18 asking if the buyer would purchase CFR main Asian ports,</p> <p>19 5 KT MX, arrival basis loading USGC.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Again, what is -- first of all, did you ask</p> <p>22 Mr. Leyman for CFR opportunities?</p> <p>23 A. No. He proposed that as a counter.</p> <p>24 Q. What is -- what's a CFR offer?</p> <p>25 A. CFR means that you purchase it on a delivery</p>	<p style="text-align: right;">398</p> <p>1 Q. When -- at that point in time did you learn</p> <p>2 that the potential seller was Tricon?</p> <p>3 A. I believe after the deal was done.</p> <p>4 Q. Did you -- did you know anything about Tricon</p> <p>5 before then?</p> <p>6 A. Yes.</p> <p>7 Q. What had you -- or what did you know about</p> <p>8 Tricon?</p> <p>9 A. I had been advised by other traders to avoid</p> <p>10 Tricon.</p> <p>11 Q. By other traders at Vinmar or outside of</p> <p>12 Vinmar?</p> <p>13 A. Outside of Vinmar.</p> <p>14 Q. Okay. And then were there also, though,</p> <p>15 discussions about where Vinmar would want the MX</p> <p>16 delivered?</p> <p>17 A. At some point -- well, in general -- so what</p> <p>18 I -- I can't say specifically and I don't remember the</p> <p>19 details, but what I do know, my agenda was to not</p> <p>20 disclose who the seller was because of my concerns that</p> <p>21 Vinmar was -- that, excuse me, Tricon was actually part</p> <p>22 of the -- we'll call it the Asia trade of MX.</p> <p>23 Q. And the Asian trade being what we discussed</p> <p>24 earlier, the folks that were --</p> <p>25 A. Cornering the market.</p>
<p style="text-align: right;">397</p> <p>1 basis so you're incurring a price that includes shipping</p> <p>2 costs, which means that you don't need to actually do</p> <p>3 the shipping yourself.</p> <p>4 Q. What was the significance of -- if any, of</p> <p>5 Mr. Leyman's comment about loading USGC?</p> <p>6 A. That indicated that the origin of this</p> <p>7 material was the U.S. Gulf Coast and that pick-up</p> <p>8 essentially the first half of August.</p> <p>9 Q. Did you believe that Mr. Leyman had the</p> <p>10 authority to accept on Vinmar's behalf terms that were</p> <p>11 different than those that you had authorized him to</p> <p>12 accept?</p> <p>13 A. Mr. Leyman had specific instructions to buy</p> <p>14 U.S. origin material only on my behalf.</p> <p>15 Q. Okay. What was your understanding of the</p> <p>16 origin of the MX for the deal that Mr. Leyman had</p> <p>17 supposedly brokered?</p> <p>18 A. It was always that it was U.S. origin but that</p> <p>19 it could come from a variety of different ports in the</p> <p>20 United States.</p> <p>21 Q. What do you mean by that?</p> <p>22 A. The M -- the MX would need to be in a tank at</p> <p>23 some port. And I had afforded him the flexibility of</p> <p>24 determining what port in the United States that material</p> <p>25 could be picked up at.</p>	<p style="text-align: right;">399</p> <p>1 Q. -- involving in trying to build the market</p> <p>2 price in Asia up --</p> <p>3 A. That's right.</p> <p>4 Q. -- to artificial level?</p> <p>5 A. That's right.</p> <p>6 Q. "Ed, given Brad is selling out of USG, am I</p> <p>7 getting 45 days from BL or 30, hopefully 45?" Could you</p> <p>8 tell us what that means, sir?</p> <p>9 A. What we're discussing are the payment terms</p> <p>10 and the issue is that when you pick a material up in the</p> <p>11 U.S. Gulf the clock starts ticking in terms of when you</p> <p>12 have to make payment. So it's a working capital issue.</p> <p>13 So I was attempting to negotiate longer terms, I</p> <p>14 believe.</p> <p>15 Q. And what did -- what did you mean by your</p> <p>16 reference to USG?</p> <p>17 A. U.S. Gulf.</p> <p>18 Q. Was that your understanding of the purported</p> <p>19 deal?</p> <p>20 A. The origin of the -- of material was -- my</p> <p>21 understanding -- my understanding was that it was U.S.</p> <p>22 origin and that doesn't necessarily mean U.S. Gulf.</p> <p>23 Q. Do you recall Mr. Leyman or anyone else</p> <p>24 telling you on July 22nd that the product -- that the</p> <p>25 product would likely originate from the Gulf Coast or</p>